

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

EAUX HOLDINGS, LLC * Docket No. 2:20-cv-1582
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VERSUS * March 7, 2022
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*
SCOTTSDALE INSURANCE CO. * * Lafayette, Louisiana

OFFICIAL TRANSCRIPT OF JURY TRIAL DAY 1 OF 4
BEFORE THE HONORABLE JAMES D. CAIN, JR.,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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United States Court Reporter
Western District of Louisiana

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Deidre D. Juranka, CRR
United States Court Reporter
Western District of Louisiana

CHAMBERS CONFERENCE

2 THE COURT: Okay. I've looked at the cases on
3 this. We delved into it. You can't use the chart. The
4 federal jurisprudence is very clear on the reserve
5 thing. The case is right on point. Reserves are --
6 here it is. It says right here, reserve -- sorry. The
7 Court does not equate reserves with undisputed amounts.
8 To that end, in this case the Court finds it would be
9 overly prejudicial and confusing to a jury with respect
10 to a bad faith claim to allow testimony concerning
11 specific amounts of reserves.

12 So this is -- I do see how it could be very
13 confusing for a jury because the reserves are not --
14 they're there for accounting purposes. They're not
15 there for, really, the claims adjusting. And I think
16 the way y'all are going about it, I could see maybe
17 where you could thread the needle; but that chart, no.
18 I think the chart's misleading.

19 MR. COX: So is the ruling, Your Honor, that we can
20 never talk about reserves.

21 THE COURT: No. I think you could probably get
22 somebody to testify about what reserves are, some of
23 that to an extent. But the chart, the way it's
24 presented, I think basically you're trying to -- that
25 chart has a couple of problems. You probably could fix

1 one or two, but that reserve thing I think is an issue.

2 MR. COX: If I take the reserves out and make the
3 other changes, though, I can use it?

4 THE COURT: Can you do that?

5 MR. COX: Yeah, just white it out. I'm going to
6 get a thing, copy it and white it out, or she's going to
7 take it out.

8 THE COURT: The way it's presented in the chart
9 you're trying to say, "We set the reserves for this, but
10 you didn't pay us for six months later on this." You're
11 trying to say they're in bad faith because they set the
12 reserves. The reserves are not what -- reserves are for
13 accounting purposes. I think that's where the confusion
14 is. If you would have, "This is what our adjustment
15 was. This is what they paid us. It took too long.
16 They ultimately owed us this," that's bad faith. Them
17 setting the reserves at a particular amount, I just
18 don't think you can use that to say they're in bad faith
19 based on how they set their reserves. There's two or
20 three cases on this point and, you know --

21 MR. COX: We'll take it out of the chart and make
22 the other changes you talked about.

23 THE COURT: I think you can go about it in a
24 different way, but I think the chart can be confusing
25 and misleading.

1 MR. WOLFF: Just to clarify, I didn't get a
2 response. I don't anticipate a problem. The before and
3 after picture, any objection to show the building before
4 and after?

5 MS. BROWN: (Shakes head side to side.)

6 MR. COX: So you want to just right now, because I
7 anticipate --

8 THE COURT: Only reason I want to do all this
9 now --

10 MR. WOLFF: I haven't seen any of this so --

11 MR. COX: You've seen it all, but I anticipate
12 you'll object to all of it. Do you object to a picture
13 of the building?

14 MR. WOLFF: Well, depends on --

15 MS. BROWN: He just asked me if he could put in the
16 picture.

17 MR. WOLFF: I don't have a problem with the
18 picture.

19 MR. COX: Picture of the damage to Lake Charles?

20 MR. WOLFF: So this is what we had --

21 MR. COX: Our client's going to testify this is
22 what he saw when he came back.

23 MR. WOLFF: But what relevance does it have to this
24 property? And they know all about the hurricane. And
25 you said you ain't letting them run with too much leash,

1 but you might let them have some --

2 THE COURT: What's the relevance of that? I mean,
3 we all lived in Lake Charles.

4 MS. BROWN: But we have to put the evidence in the
5 record.

6 THE COURT: Right. But you got to put evidence of
7 your building, not what happened downtown Lake Charles.
8 You want to come over to my house? I mean, you don't
9 want to put on what happened at my house.

10 MR. COX: Let me ask this, Judge. There's no issue
11 in this case that the hurricane hit Lake Charles and
12 that the building was damaged by the hurricane. They've
13 never raised that. And if that's not an issue, I
14 don't --

15 MR. WOLFF: No. That's why we paid 1.8 million.

16 MR. COX: Damages to the building. These are all
17 photos of damage to the building.

18 THE COURT: Certainly. I mean, what do you think,
19 Mr. Wolff?

20 MR. WOLFF: I have no problem with that.

21 MR. COX: This is the Eaux Holdings estimate, last
22 page, summary page.

23 MS. BROWN: The Skyline estimate.

24 MR. WOLFF: Yeah, see, this is the problem that we
25 have. It's a threshold question. That estimate is a

1 nothing because --

2 THE COURT: That's what you say it is. They're
3 going to say this is what the evidence is going to show,
4 that that estimate's valid.

5 MR. WOLFF: No. They actually have moved down on
6 that. They gave an overall estimate, which if you add
7 all the things up it was about 2.8 million. When you
8 add --

9 MR. COX: Disagree.

10 MR. WOLFF: Excuse me. When you add the mitigation
11 and when you add their overall estimate with everything,
12 it comes to about 2.8. And it's moved down, down, down.
13 And he said, "Look, that was just an estimate. It's not
14 the actual damage. What was actually there is what was
15 there."

16 And then the other thing is and our problem with it
17 is --

18 MR. COX: That's the last page of his estimate,
19 Judge.

20 MR. WOLFF: Excuse me. The problem is he never
21 gave an actual cash value. That's our problem.

22 MR. COX: Which you're not required to do.

23 MR. WOLFF: That is the subject of the motion, and
24 you said in response to the motion that upon timely
25 objection at trial you will consider it.

1 THE COURT: Here's what I'm going to tell you on
2 this. I'm going to let him use the exhibit because it's
3 his argument of what the evidence is purported to show.
4 Let me tell you, if he don't prove that the jury's going
5 to hammer him because they're going to look at it him
6 and go, "Well, you didn't prove what you said you were
7 going to prove."

8 MR. COX: We've talked about the changes.

9 THE COURT: Yeah, you got to change that if you
10 want to use that.

11 MR. COX: This is out of their property report that
12 shows the policy limits, 2 million, 10,000, and 25,000.

13 MR. WOLFF: It is what it is.

14 MR. COX: I can't use the reserves. I get it. Or
15 can I tell them what --

16 THE COURT: No. Here's what you're going to have
17 to do on the reserve. You're going to have to lay a
18 foundation through a witness for a very specific narrow
19 issue. You'll have to lay a foundation. We'll have to
20 deal with it.

21 MR. WOLFF: I got a 403 claim big time at that
22 point. He's trying to thread the needle for what. It's
23 going to have --

24 THE COURT: We'll see. Maybe he'll surprise us.
25 Yes, what is that?

1 MR. COX: The next one is one we've argued ad
2 nauseam about. It's what we intend to prove the actual
3 costs are. We've sent them a revised --

4 THE COURT: That's what the evidence -- hey, look,
5 I'm going to let you use it; but you're going to have to
6 prove that that's what it is. Again, this is a road map
7 to what you're going to prove.

8 MR. COX: I'm going to take off the logos. I'm
9 going to take of Nationwide for you.

10 MR. WOLFF: Then no problem.

11 MR. COX: I'm going to try to do that on all of
12 them, taking off the Nationwide, taking off the logos.
13 This is what we ultimately claim, policy limits less
14 what they've paid. We're claiming that's what's owed.

15 THE COURT: That's what you're purporting the
16 evidence will show.

17 MR. COX: That's the picture you want to use, too.
18 That's the building.

19 MR. WOLFF: Clean all that up for me.

20 THE COURT: Blue tarp. Oh, my gosh.

21 MR. COX: This is their letterhead and a motion
22 alleging misrepresentation by Mr. Odom.

23 MR. WOLFF: Oh, no. No, no, no.

24 THE COURT: Let me see what -- what is this about?

25 MR. WOLFF: That's our -- one of our defenses that

1 we raised. It depends what the evidence is.

2 THE COURT: I've already ruled on this, haven't I?
3 What'd I do, deferred it to the merits?

4 MR. WOLFF: You did, but here's the problem.

5 THE COURT: I said you would have an opportunity to
6 prove at trial if he misrepresented something to y'all
7 or something. That's certainly within your prerogative
8 to try to establish at trial.

9 MR. COX: This is just a pleading, Your Honor.

10 MR. WOLFF: Well, wait. This came up in the
11 context of that 1973 claim. In response to that, they
12 dismissed it. This is opening all kinds of doors and --

13 THE COURT: What's the purpose of this, Mike?

14 MR. COX: They're claiming he made
15 misrepresentations under the policy and it's a nonsense
16 claim, and that's how they've defended this claim.

17 THE COURT: You're saying that's an affirmative
18 defense they've asserted?

19 MR. COX: They've gone on the offense, and we want
20 to be able to say what they've done.

21 THE COURT: Well --

22 MS. BROWN: This is essentially inoculating the
23 jury to what he's going to get up and say.

24 THE COURT: What are you going to say, Mr. Wolff?

25 MR. WOLFF: It depends on --

1 THE COURT: Are you going to say he misrepresented
2 facts to y'all in your opening statement or he
3 misrepresented stuff to you? I mean, you can.

4 MR. WOLFF: I'm going to --

5 THE COURT: Because again, the opening statement is
6 for y'all both to lay out what you think the evidence is
7 going to prove. And if you think the evidence is going
8 to prove and you can establish he misrepresented
9 information to your client, you can certainly go out
10 there.

11 MR. WOLFF: So in answer to your question, I'm
12 going to ask the question did we get full and fair
13 disclosure of all the issues. I'm not going to call
14 him -- I'm not going to say he lied or that there was a
15 material misrepresentation. My plan is not even to
16 raise that defense in opening.

17 MR. COX: Is that a defense they're dropping?

18 MR. WOLFF: No.

19 THE COURT: No. I don't take what -- I take what
20 Mr. Wolff as saying is he is going to articulate it in a
21 very delicate way.

22 MR. WOLFF: And see what the evidence does.

23 MR. COX: Talk about their defenses.

24 THE COURT: Here's my problem. It's your burden of
25 proof on what you're going to prove. You're trying to

1 now in your opening -- I get what you're trying to do.
2 I would do it sometimes. I would try, you know,
3 "They're going to say my client ran the red light, but
4 we're going to tell you he didn't run the red light." I
5 hear what you're saying.

6 MR. COX: He's going to testify he did not
7 misrepresent anything, and they're going to wonder why
8 are you even talking about it because they're making it
9 an issue.

10 MR. WOLFF: No. Actually, the evidence can come in
11 on several things. One is that they were not --

12 THE COURT: Mr. Wolff, here's the thing. Just like
13 in any civil case, I mean, the plaintiff can try to head
14 off any kind of adverse claims against him, affirmative
15 defenses. You know, let's just take a personal injury
16 case like I was using earlier and somebody -- you know,
17 y'all are going to -- the defense is going to attack the
18 liability of it by saying, you know, like I said, "He
19 ran the red light." "No. They're going to say he was
20 speeding and he ran the red light. We're going to prove
21 to you that he did not speed and he did not run the red
22 light." That's fair game in opening statement if that's
23 an affirmative defense. If you're going to say that he
24 misrepresented facts, they can address it in opening
25 statement, "I think the evidence will prove that he did

1 not misrepresent."

2 MR. WOLFF: I think they can argue that, but
3 putting our names as the attorneys down there that
4 they're attacking us and saying, "The attorneys are bad.
5 They're calling him liars" --

6 THE COURT: I do think that part of it I don't
7 like. I think using the pleading the way you're using
8 it is probably a little too much. I think what you can
9 do is get up there and certainly address to the jury
10 that, "Scottsdale's going to say he misrepresented.
11 We're going to show you he did not." But I think he's
12 right a little bit. I just don't think you should be
13 putting the pleading like this on there, the lawyers
14 names. I mean, if you want to take this part off, then
15 you can use it. Just take the lawyers names off,
16 because you're trying to make it too personal.

17 MR. COX: Fair enough.

18 THE COURT: Trying to make Mr. Wolff look bad.

19 MR. COX: This trial unfortunately --

20 THE COURT: Well, the motion for summary judgment
21 stuff --

22 MR. COX: -- just like Mr. Wolff has said, they've
23 got a job to do. It's going to get personal. It is.

24 THE COURT: I get that.

25 MR. COX: It's the nature of these cases.

1 THE COURT: Take the lawyers' names -- wipe the
2 lawyers' names.

3 MR. WOLFF: And the summary judgment, too. He's
4 got quotes from the summary judgment itself. If we do
5 that, then we open up that they had a whole 'nother
6 claim they had to dismiss. I thought we weren't going
7 there.

8 MR. COX: I don't need to show it, Judge. I'll
9 just say it.

10 MR. WOLFF: Yeah, you can say that's one of their
11 defenses, you know, "They delay, deny, and now they want
12 to fight."

13 MR. COX: Yep.

14 THE COURT: I think if you had a cleaner exhibit to
15 say, hey, they've alleged he misrepresented; but you've
16 got the lawyers' names. I've ruled -- the summary
17 judgment is for me to rule on, not the jury. But I
18 deferred it. I realize that. I deferred it because I
19 felt like this was a question of fact for them, not for
20 me. There was enough factual dispute on both sides. I
21 think you'd be safer not to use that.

22 MR. COX: Okay.

23 THE COURT: I mean, if I would have been in your
24 shoes, I would have tried too.

25 MR. COX: May I ask you this? I'll ask all of

1 y'all this.

2 THE COURT: You pushed it as far as you could go.

3 MR. COX: Where's a quick place to get lunch that's
4 decent right around the courthouse?

5 (Off the record discussion.)

6 **COURT PROCEEDINGS**

7 (Jury enters courtroom.)

8 THE COURT: Okay. Plaintiffs ready to begin with
9 their opening statements?

10 MR. COX: Yes, sir.

11 THE COURT: First of all, y'all have a good lunch?
12 Did they take care of you? Okay. Let me know if y'all
13 need anything.

14 Okay. Mr. Cox, you may proceed.

15 **OPENING STATEMENTS**

16 MR. COX: Thank you, Your Honor. First of all, I'd
17 like to thank y'all for being here. I know it is
18 inconvenient, but it's very important. I'll echo
19 everything that Judge Cain told you both on behalf of us
20 and on behalf of my client, Joey Odom, and his wife,
21 Lydia.

22 In 2018 Mr. Odom made the biggest investment of his
23 life. He bought a commercial building for \$2 million
24 and he borrowed the entire amount to buy it. It was his
25 biggest investment. And he got insurance on it through

1 Scottsdale Insurance Company trusting that if he paid
2 his premiums, 100 percent of his premiums, and he paid
3 them on time that if he ever had a claim his biggest
4 investment would be protected and Scottsdale would pay
5 the claim fairly and promptly. Scottsdale didn't do
6 that. They broke that promise. They have underpaid the
7 claim by over \$200,000 to date and what they did pay
8 they paid way beyond the legal deadline in Louisiana.

We all know that August 27th, 2020 Hurricane Laura came in as a category four storm and devastated Lake Charles. Before the storm, Joey evacuated his family to Arkansas. As soon as it was safe to do so, he and his son drove back from Arkansas to protect his most valuable investments, his home, his commercial building. This commercial building is about a 15,000-square foot building, two floors. The first floor, as you heard, housed before the storm the Department of Homeland Security. The second floor was vacant. When he came back to Lake Charles he discovered devastation not only to the city, trees were down, power lines were down, the windows were out of tall buildings, roofs were damaged everywhere. The city was hardly recognizable. His building was no exception.

1 lot of rain with Hurricane Laura. The rain damaged the
2 interior of the building throughout the first and second
3 floor. Essentially, it had to be gutted. In fact, when
4 the adjuster for Scottsdale, Monte Jones, came on
5 September 15th he thought that the building would need
6 to be possibly torn down and rebuilt. He said that
7 might be a better way.

8 So Joey did everything that he could to protect his
9 investment. He did everything he was required to do
10 under his policy. Again, he had paid 100 percent of his
11 premium, not 12 percent, 100 percent, and he paid it on
12 time. And he did that knowing that if he was a day late
13 he would be canceled or if he paid only 12 percent or
14 90 percent they would cancel him and he would get zero
15 payment in the event of a disaster. So he did what he
16 was supposed to do before the storm, and then when he
17 got back he did everything he could to protect that
18 building.

19 He hired a company called Crest Exteriors to put a
20 temporary roof on the building right away. He also
21 hired a mitigation company called All Clear. All Clear
22 basically tried to secure the rest of the building, the
23 windows that were broken, and to tear out all the things
24 that were wet and dry out the rest. And it was
25 expensive. All Clear billed 491,000. That was later

negotiated by Mr. Odom's attorney down to 330,000. Not only that, he took some extraordinary measures.

3 It kept raining and then we had Hurricane Delta,
4 but as it rained the temporary roof wasn't doing its
5 job. So Joey and his son went to Lowe's and purchased
6 PVC and Visquine and built these really large containers
7 to capture the rain water and pump it out of the
8 building, and at times they spent the night in that
9 building to protect this building.

22 Jeff meticulously prepared a proof of loss,
23 meticulously prepared a four-volume proof of loss. It
24 took him 18 days to do so. It was prepared by
25 September 15th. On September 15th he handed this proof

1 of loss to the adjuster that was sent there by
2 Scottsdale, Monte Jones, and he intended it as a proof
3 of loss. You will see that in Louisiana, the judge is
4 going to instruct you on the law, but there's nothing
5 magical or technical about a proof of loss, nothing
6 magical or technical. An individual could do it on
7 their own. In fact, in some cases it's enough if the
8 adjuster just has access to the property and inspects
9 the property. It's a very flexible requirement, nothing
10 formal. But this is about as good as it gets. This was
11 Jeff Major's best attempt with 30 years experience to
12 give a proof of loss. You're going to find out that
13 Scottsdale doesn't accept even that as a proof of loss.
14 They're going to tell you that's not a proof of loss.
15 Scottsdale's adjuster also looked at it. He didn't
16 prepare a proof of loss. He just took -- he gave what's
17 called a rough order of magnitude, a shot from the hip.

18 If I may, I'd like to show you some pictures. This
19 is the building and what it looked like before Hurricane
20 Laura. It's off Common Street. It is near Petro Bowl.
21 These are photos of the extensive damage to the
22 building, to the roof and all areas of the building,
23 really. And this is Page 152 of Jeff Major's estimate.
24 And if you add the two numbers together, Jeff's estimate
25 was \$2,196,188.79. That estimate did not even include

1 the All Clear bill of 491,000.

2 In this case the policy limit is \$2,035,000,
3 2 million on the building, 10,000 increased cost of
4 construction, and \$25,000 debris removal. So it was
5 readily apparent, it was obvious to Jeff, that the
6 building had more damage and would cost more to repair
7 than the policy limit. And that's the proof of loss
8 that he gave to the insurance company.

9 Monte Jones said that he hadn't run the numbers but
10 he thought it might be worth tearing down the building
11 and starting over. He said that he thought the loss was
12 at least, at least \$1.5 million.

13 And so what did Scottsdale do? So you'll see that
14 on September 23rd, 2020, Scottsdale paid \$250,000. In
15 their claims file they wrote that that entire payment
16 was for mitigation and temporary roofing. In other
17 words, they paid zero toward the repair of the building,
18 zero. And that's after Monte Jones said that he thought
19 it was at least a \$1.5 million loss and after the proof
20 of loss from Jeff Major said over the policy limit.

21 There were other payments later in time. And
22 eventually, by May, seven months too late, Scottsdale
23 made a payment of \$1,120,726 for a grand total of
24 \$1,796,090.51. Again, that's below the policy limit by
25 about \$238,000.

1 So the big issue in the case that you're going to
2 have to decide is whether the payment of zero, 250,000
3 but all for mitigation, whether that payment is a
4 realistic reasonable estimate of the damages to Joey's
5 building or whether that was mistreatment of Joey.
6 That's about less than one-eighth of the policy limit.
7 It's about 12 percent of Jeff Major's proof of loss, the
8 payment that was made.

9 You're going to learn in Louisiana that there are
10 duties that insurance companies have to follow also.
11 The policy holder has to pay the premium on time and do
12 other things under the policy, and Joey did. The
13 insurance company has to make a written offer to settle
14 the claim within 30 days of proof of loss. They will
15 admit that they did not make a written offer to settle
16 the case within 30 days of Jeff Major's estimate. The
17 second thing is they have to make payments promptly.
18 They have to adjust the claim promptly and that is they
19 have to pay the full amount of the loss, actual cash
20 value, within 30 days of satisfactory proof of loss; and
21 they did not do that in this case. In fact, they made
22 no payment toward the repair of the building within 30
23 days of this date.

24 We don't have to guess in this case whether Jeff
25 Major did a good estimate, whether his estimate was

1 reasonable and accurate. We don't have to guess because
2 the work, almost all of the work, has been done now. If
3 we could go to the costs to repair the building, these
4 are actual costs that Mr. Odom has incurred to repair
5 the building. And we now know that they are right about
6 the exact amount of the policy limit. 2,033,000. The
7 policy limit's 2,035,000. So Mr. Major had a very
8 accurate estimate. The \$250,000 was grossly
9 insufficient, grossly inaccurate. We're going to go
10 through and show each and every one of these bills and
11 what was spent on this building, what the charges were
12 to repair this building; and all of these charges will
13 be related to the damages caused by Hurricane Laura.

14 Could we put the chart on, please. That's how much
15 was still owed, the 238. And this chart which you're
16 going to see throughout the trial shows the redline at
17 the top, the policy limit, \$2,035,000. It shows in the
18 first column on the left what Eaux's public adjuster,
19 Jeff Major, estimated to be the damage; and that was
20 without even the mitigation bill. It then shows
21 Scottsdale's field adjuster, Monte Jones, and he said he
22 thought it was at least 1.5 million. He didn't do a
23 detailed estimate like Mr. Major. Mr. Major used a tool
24 that's used by the insurance company, the industry in
25 this case. He used a thing called Xactimate. Every

1 little item in the building that needs to be repaired or
2 replaced is itemized and there's a cost associated with
3 it. That's the insurance company software. He used it
4 and came up with a number. Monte Jones just shot from
5 the hip, thought the building was totalled, knew or
6 believed it was over \$1.5 million loss; but Scottsdale
7 decides only to pay \$250,000 seven days after Monte
8 Jones has this estimate.

9 But we know, the green column, we know how much it
10 actually cost now. And we know that Mr. Major's
11 estimate was good and that the Scottsdale payment of
12 \$250,000 was grossly inadequate and unreasonable. And
13 we know, finally, what they eventually paid. They made
14 their first payment that's at the chart at the very
15 bottom by 9/23/20. All of the other payments were
16 untimely in this case. And the last one, the biggest
17 one, was May 18th, seven months too late.

18 The issue in this case is whether insurance
19 companies should also be held accountable for what the
20 laws are and what the duties under the law for them are,
21 not just the policy holder, but it goes both ways. They
22 too have to follow the law. The judge is going to
23 instruct you that if you find that they paid that
24 payment late, after the 30 days after proof of loss, and
25 if they did it arbitrarily, capriciously, or without

1 probable cause then they're responsible for penalties
2 also. What's that mean, arbitrary, capricious, or
3 without probable cause? The judge is going to tell you,
4 but basically means they have to have a good excuse for
5 not doing it. It has to be reasonable. In this case
6 the evidence is going to show that there was no
7 reasonable good excuse. The knowledge they had within
8 that first 30 days was enough, and they should have paid
9 fairly under this policy.

10 Scottsdale has some nonsense excuses. First,
11 they're going to say that this doesn't count as proof of
12 loss. I'll submit to you it would be hard to do a
13 better one. They don't want to count anything as proof
14 of loss because it starts their legal clock ticking.
15 They then have 30 days.

16 Their next excuse is, well, there were a lot of
17 disasters. You're going to hear from Mr. Lock, who's
18 here. We're going to call him as the first witness.
19 He's their desk adjuster. He's going to tell you,
20 "There were a lot of disasters that year. We were
21 really busy. It was the holidays. We needed more
22 resources. We needed more adjusters, more people like
23 me." But that's not a valid legal excuse. That would
24 be like the insured saying, "You know, it was the
25 holidays. Finances were tight. I had a lot of things

1 to do, some family get-togethers. So I didn't pay my
2 premium. I didn't pay it on time. I didn't pay the
3 full premium." That's not an excuse. These are legal
4 obligations that must be fulfilled.

5 Next, Scottsdale's going to say, well, Mr. Odom's
6 building looks better than it looked before. This is a
7 replacement cost value policy and that's what this kind
8 of policy does. Once you do the work, they have to pay
9 you for the work. Sort of like a homeowner's insurance
10 policy, if your roof gets blown off on your home and
11 your home was built and roofed in 1976, like his
12 building, and the roof gets blown off and you have a
13 replacement cost value and you pay 25,000 for that new
14 roof, you get a new roof. Of course it looks better
15 than the one that was on there from 1976 because that's
16 what your premium paid for. That's what you paid for.
17 That's what Scottsdale promised to give. They can't go
18 back and put a 45-year-old roof on. It's not available.
19 They have to put a new roof. So in some respects his
20 building does look a little bit better because that's
21 what the policy is designed to do. That's what he paid
22 for.

23 Scottsdale, though, they didn't just come in and
24 not pay his full amount of his claim and not pay it in a
25 timely manner like they were supposed to do under

1 Louisiana law. Instead, they have -- they have asserted
2 that Mr. Odom has made misrepresentations which would
3 void his policy, misrepresentations of fact. If that's
4 true, taken to the logical extension, they're accusing
5 him of insurance fraud which is a serious crime that can
6 send people to the penitentiary. That's their approach.
7 He goes out. He does everything he's supposed to do
8 under the policy. He hires a public adjuster to do the
9 best he can presenting this claim. And they say, "You
10 misrepresented it. That voids your policy."

11 And they have litigated this thing fiercely. Joey
12 hired lawyers in November, November 11th. He would not
13 have been paid in this case. You will find that the
14 payments came after he hired a lawyer. Most of the
15 payments, the big ones, came after a lawyer and after a
16 lawsuit was filed. That's unfortunate that he had to do
17 that. It's unfortunate that they've taken it all the
18 way here.

19 As a jury, at the end of this thing, we're going to
20 ask you to give Joey 100 percent compensation under his
21 policy, the full payment that he's entitled to, and to
22 send a message to Scottsdale that they have to follow
23 the law too and they have to pay on time. Thank you
24 very much.

25 THE COURT: Mr. Wolff.

1 MR. WOLFF: Thank you, Your Honor. Good afternoon.
2 Appreciate your time. I will say this. We're going to
3 try to be as brief as we can. And please understand in
4 doing that, if we don't say everything we want to say,
5 that you all will know that we've got more to say. We
6 can make this longer; but we've got to respect your time
7 and so we're going to try to make this brief, as brief
8 as we can. But there are issues. This is a complex
9 claim. As I said, this is the first one that's come to
10 court.

11 And why are we here? Why are you here? You're
12 here to judge the facts. And we have a dispute. I
13 didn't object when I heard some things. I don't agree
14 with much of what was said, but I agree with some of it.
15 Why are we here? We agree that Scottsdale issued a
16 policy. We agree that Scottsdale needs to pay what is
17 owed. We agree that Scottsdale paid 1.78 or 9 million.
18 We agree to all of that. What we're disagreeing about
19 is whether or not we were reasonable in asking questions
20 and getting answers before we paid and whether this
21 process got complicated because we didn't get answers,
22 reasonable answers about important things during the
23 process. And we also disagree about how the process
24 actually lays out.

25 || But, you know, you saw all of that up there. None

1 of that's evidence. None of what I tell you is
2 evidence. It's just supposed to be a road map of what
3 we plan to show. And you saw that up there. If we put
4 something up there, we need to prove it. You need to
5 hold us all to it. If we say we're going to prove
6 something, then we need to prove it. If we don't, then
7 that's a problem.

8 So the plaintiff has the burden here. The
9 plaintiff has to show all of the things that they talked
10 about. And in this case they have to prove that
11 Scottsdale was unreasonable in paying what it paid and
12 that it was fully apprised of everything it needed to
13 make those payments timely and that its payments were
14 unjustified, unreasonable, without cause. The judge is
15 going to instruct you all of that. But the questions
16 that we've got to look at, the road map we've got to
17 look at, is why are we here, why are these litigants
18 here, why have most of the other cases resolved, and why
19 is this one here and we have a big difference.

20 Now, first off, Mr. Odom has nothing to do with
21 this claim. He is not the policy holder. He did not
22 pay premiums. He is not making a claim. They told you
23 Joey did this, Joey did that. You'll see the policy.
24 Joey Odom is not the policy holder. The actual policy
25 holder was Four-O, that's F-0-U-R dash 0, but then

1 through some complicated transactions of a 1031
2 exchange, one of Mr. Odom's companies, Eaux Holdings,
3 did this tax arrangement and got this building. And
4 that is the actual claimant here, is Eaux Holdings. So
5 you've got to hold Mr. Cox to it. It's not Mr. Odom at
6 all. It's Eaux Holdings. It's an LLC.

7 Now, you'll learn that Mr. Odom has many, many,
8 many companies. He's got all kinds of property. And
9 it's not really relevant what-all he's got, but it is
10 relevant that you know that the actual claimant is Eaux
11 Holdings.

12 And it's also relevant to know about this building.
13 It was purchased in 2018. It was not a new building. I
14 think all the evidence will show that it was built in
15 1976. One of the questions that will come up, so why is
16 that important. One of those questions is had it been
17 well maintained. Were there problems there before,
18 before the hurricane, that would impact the replacement.

19 Actually, also had an interesting component to it
20 because it had the Department of Homeland Security in it
21 and that required some special issues that the building
22 actually didn't have. You're going to learn and I'll
23 suggest that we did not know but you're going to learn
24 that the goal of Eaux Holdings was to make this a better
25 building and to get a long-term contract for the

6 So the question that we're really looking at is was
7 Scottsdale unreasonable in the way that it adjusted this
8 loss and made those payments. Now, we talked about this
9 during the voir dire. Everyone's talked about it.
10 Unfortunately, all of you or most of you or close
11 relatives have had to deal with the tragedy of
12 hurricanes and insurance so you know. But you'll see
13 it's a contract, and Scottsdale certainly agreed that it
14 has to pay what's owed in the policy. No one disputes
15 that. But by the same token, the insured also has to be
16 forthcoming when questions come up and has to give that
17 information in a proper way so that the loss can be
18 adjusted. Otherwise, it gets complicated. And we're
19 going to suggest that that's what the evidence is going
20 to show here.

21 And you may recall there was some discussion about
22 what does a policy provide. There's two levels of it,
23 actual cash value policy and then replacement cost.
24 Actual cash value, as you hear -- you'll hear this, it's
25 an amount less depreciation that the carrier, the

1 insurance company, will pay and then as you move forward
2 with replacement it needs to pay that; and that's what
3 Scottsdale was doing.

4 And while there was a suggestion that Mr. Odom for
5 Four -- excuse me. Not Four-0, now it's Eaux
6 Holdings -- had to go out and hire a public adjuster.
7 What you're going to hear is August 27th, the tragedy,
8 August 28th, Mr. Major is in Lafayette -- I mean, in
9 Lake Charles with a contract before any claim is made
10 and gets signatures to move forward. So they were
11 moving forward with a public adjustment before there was
12 any question about what's going to be paid, is it late.
13 Started with that.

14 And then you saw those books. What's in those
15 books? What's not in those books? You're going to hear
16 that Mr. Major went to Mr. Odom and was looking at the
17 policies and he actually was looking at the wrong policy
18 and he said, "I don't think there's much here. This
19 building is not in great shape. I don't think there's
20 much help I can give you." So they went over it and
21 ultimately he signed up Four-0 or Eaux Holdings.

22 So then he moves forward to submit this big thing.
23 They want to say it's a proof of loss, but it's an
24 estimate. And if you really add it all up, if you take
25 that plus that 400 -- over \$450,000 cleanup bill which

1 everybody agrees, including Eaux Holdings, everyone
2 agrees that that was completely unreasonable, you start
3 adding all that up, it's over 2.8 million or right at
4 2.8 million. And so they come to Scottsdale and say,
5 you know, we need an advance. So Scottsdale advanced
6 250,000. And they sent out an adjuster.

7 Monte Jones went out there. When he got out there,
8 there were no lights. He couldn't see. He knew there
9 were issues, but there was no way to determine the full
10 extent of it. In fact, he came back and said, "This is
11 complicated. There are problems. We need to get
12 another expert." And you'll see that Scottsdale then
13 hired Grecco which is an outfit that told Mr. Lock that
14 they had experience in government buildings and
15 leaseholds and whatnot. So they went out, they came
16 back, they gave a number, and we moved forward.

17 During that time, you'll see that questions start
18 coming up. Has this building been well maintained?
19 Were there pre-existing problems? Mr. Major, whom
20 you'll again hear, said when he first looked at it,
21 "This thing's old and highly depreciated." When
22 Scottsdale asked Mr. Major says, "We understand that the
23 building was well maintained." And yet, then we get
24 Mr. Grecco -- excuse me, Grecco's estimate from
25 Mr. Collisson that says, wait, there was leaking

1 paneling, there was water intrusion, there were
2 pre-existing issues all around this thing, damages not
3 related to the storm. Why are they telling us it was
4 well maintained?

5 Mr. Major's books, one of the questions we're going
6 to ask you is why wasn't the 2018 inspection report
7 about that building in that set of books. We didn't get
8 it till after we paid the 1.798 million. But we'll show
9 that to you and you'll see that there were
10 recommendations for repair and replacement of all kinds
11 of things on that building. Why wasn't that disclosed?

12 So the process moved on and they said, "Look, we're
13 encountering some issues during the repair." So we're
14 away from the actual cash value side to the repair side,
15 the replacement cost value, and we're working with them.
16 And they ask for a specialty expert to come look at it
17 because they were having problems, and you're going to
18 see that J.S. Held sent out Mr. Granger Stuck. And
19 he'll testify. This guy's got lots of experience all
20 over the world with big time commercial issues, and he
21 walked through it and worked with them. And he's going
22 to show you the actual cost, what actually is out of
23 pocket for Eaux Holdings, and that number is actually
24 less than what was paid. And one of the things that
25 we're going to want to have you look at is that chart

1 they showed you. Are those really actual costs or not?
2 Was Mr. Major's original proof of loss or estimate
3 really on the mark or not?

4 We are going to walk you through all of that; but
5 one of the things that Eaux Holdings is going to have to
6 establish is that they gave us the full scope of what
7 was going on, that they answered the questions fully and
8 didn't conceal and completely forthcoming. Were they or
9 were they not? Are you fully apprised of something if
10 there's not full disclosure? So the first step they'd
11 have to say is, "Oh, yeah, we provided them everything."
12 And then they want you all to say, "Oh, Scottsdale
13 shouldn't have done any of this. You need to make them
14 pay." They have to show to the decision that you all
15 make that we did not have a reasonable position, that we
16 weren't justified in questioning the claims that were
17 submitted, and we weren't justified in asking why are
18 the numbers all over everywhere, why is all of this
19 happening. They've got to prove that.

20 Now, like I said, there are some things that we can
21 agree upon and that is that Scottsdale has paid
22 significant dollars. I've got a chart here. Let me
23 find that if I can. We all agree that this money was
24 paid. That's a lot of money. And there's not going to
25 be dispute about that. The question that they're going

1 to have is were some of those payments untimely.
2 They've got to prove that. We're going to say no, of
3 course not, because we worked with them along the
4 process and had problems getting important information.
5 Then they're going to have to say that that money was
6 not sufficient to put Eaux Holdings back in a position
7 at least as good as it was in.

8 I think you'll find that the evidence will show
9 that the building is in much better shape as Eaux
10 Holdings wanted to do from the very beginning. That was
11 planned. It's now got that gold tenant. It's making
12 15,000 a month off of that tenant. It's got a second
13 floor that was vacant, but you'll find it was vacant
14 before.

15 At the end of the day insurance company does
16 contracts, does take premiums, and does make payments.
17 But the question is was it unreasonable here to pay this
18 and not pay the demands that they've made, and we'll be
19 asking you to look at that evidence and see if you can
20 resolve the dispute that we've got. And we appreciate
21 your time and thank you.

22 THE COURT: Mr. Cox, you ready to call your first
23 witness?

24 MS. BROWN: I am.

25 MR. COX: Yes, Your Honor.

1 THE COURT: Ms. Brown, are you ready to call your
2 first witness?

3 MS. BROWN: Your Honor, plaintiffs will call Adam
4 Lock.

5 THE COURT: As he's coming up -- come on up,
6 Mr. Lock. The deputy clerk will swear you in. Let me
7 see counsel for a second on the record.

8 **BENCH CONFERENCE**

9 THE COURT: Just a reminder, I'm going to keep you
10 on the clock as I told you before so this thing moves
11 along. I just want to remind everyone that I haven't
12 forgotten.

13 MR. WOLFF: Did I go over?

14 THE COURT: You didn't. We're going to finish this
15 trial this week. Depositions and stuff, that's going to
16 be --

17 MS. BROWN: No worries.

18 MR. WOLFF: Judge, I didn't object. I'm going to
19 tell you, I'm wanting to.

20 THE COURT: You could have. I probably would have
21 overruled it but --

22 MR. WOLFF: I wanted this on. The policy holder is
23 Eaux Holdings. It's inappropriate to suggest that it's
24 Mr. Odom doing anything on that policy. It's Eaux
25 Holdings. So I didn't object, but that was not

1 accurate.

2 MR. COX: I stipulate to it.

3 THE COURT: I understand what you're saying, but at
4 the end of the day they're going to put him on the stand
5 and he's going to say he's the sole owner of that LLC.

6 MR. WOLFF: But I really don't --

7 THE COURT: I understand. He's technically not the
8 policy holder.

9 MR. WOLFF: I left it alone, but I'm just saying I
10 counted. It was over 20 times that -- never once was it
11 mentioned that the actual policy holder was Four-0 and
12 then it was switched to Eaux Holdings. That's all fine,
13 but it's not Mr. Odom.

14 MR. COX: I'll clear it up. I don't disagree with
15 you.

16 MR. WOLFF: Okay. I want to keep this running
17 smoothly. I don't want to object. "Let's send a
18 message" was in there. That was another issue. This is
19 why I raise this. It's not -- this is not anything
20 other than what's on this policy. And to have this jury
21 be corralled in and worked up to make this company pay
22 for the tragedy that hit Lake Charles is not
23 appropriate. It's this policy, these facts.

24 THE COURT: I'm not sure what you're referring to
25 there because I don't remember him really saying too

1 much about the -- I mean, we all know a hurricane hit
2 the town.

3 MR. WOLFF: He said "send a message." I'm just
4 putting it on the table. This is exactly why I filed
5 that motion. Fifth Circuit's clear. I'm trying to set
6 parameters here so we don't have a bunch of this.

7 THE COURT: I understand. You know, we're going to
8 probably be right back here in closing arguments and
9 everybody's going to get --

10 MR. WOLFF: I thought --

11 THE COURT: -- you know, so, look, the objection's
12 noted for the record. They know the rules and the
13 parameters. But, you know, when you get to closing
14 arguments, I don't know what he's going to say. I can't
15 imagine him saying something like that, but we'll just
16 have to address it as we get there. Okay.

17 MR. WOLFF: Yes, Your Honor.

18 MS. BROWN: At the end of the day will we get a
19 tally of how much time we have used?

20 THE COURT: Lisa's keeping the clock.

21 MR. COX: Pressure's on.

22 THE COURT: She's keeping the clock.

23 MS. BROWN: (Inaudible.)

24 THE COURT: That won't count towards you. I'm
25 talking about now we're on trial time. If y'all want to

1 spend five hours cross-examining the witness, that's on
2 you. But at the end of the day we're wrapping this
3 thing up this week.

DIRECT EXAMINATION

9 || BY MS. BROWN:

10 Q. Good afternoon, Mr. Lock. Could you tell the jury
11 who you are and where you're from.

12 A. My name is Adam Lock. I'm a claims adjuster for
13 Scottsdale Insurance Company, I was for the handling of this
14 claim. I'm located in Scottsdale, Arizona.

15 Q. In Arizona. Okay. Is this the first time you've
16 been back to Louisiana since Hurricane Laura?

17 A. I wasn't here for Hurricane Laura.

18 Q. I guess that's a better question. You didn't
19 actually come down and adjust on the ground here in
20 Louisiana. You were I guess what we have come to know as the
21 term desk adjuster. Is that what you were?

22 A. Yes, ma'am.

23 Q. Did you get a chance to check Lake Charles out
24 while you were down for trial?

25 A. I came in last night.

1 Q. Did you come into Lake Charles or Lafayette?

2 A. Lafayette.

3 Q. Okay. You understand the case that we're here on
4 today is the first Hurricane Laura trial to be tried, period?

5 A. I wasn't aware of that until opening statements.

6 Q. Okay. You just heard that this morning for the
7 first time. You agree that Hurricane Laura was a category
8 four hurricane that hit Lake Charles, Louisiana in August
9 of 2020?

10 A. I don't recall the category; but, yeah, it was a
11 hurricane that hit Lake Charles, yes, ma'am.

12 Q. Okay. You worked on the claim, but you don't know
13 the strength of the storm that hit?

14 A. Well, the strength of the storm, knowing the exact
15 wind speed, doesn't change my handling of the claim.

16 Q. Okay.

17 A. We're going to handle the claim based on the
18 damages that we see and what needs to be done to put it back.

19 Q. Okay. Were you aware at any point in the handling
20 of your claim that this was the worst natural disaster to hit
21 southwest Louisiana in modern history?

22 A. I think so, yeah.

23 Q. Well, did you know that?

24 A. I am aware of that, yes, ma'am.

25 Q. Okay. You would agree with me that hurricanes like

1 Hurricane Laura are the very type of disaster that property
2 owners in southwest Louisiana insure their properties
3 against?

4 A. Yeah, I would agree that's one of the reasons
5 people buy insurance. Yes, ma'am.

6 Q. And Scottsdale sells policies of insurance to
7 property owners in southwest Louisiana, which is a high
8 hurricane risk area?

9 A. They do.

10 Q. Okay. There is no question that there was coverage
11 under the Scottsdale policy for hurricane damage to the
12 building at 620 Esplanade, correct?

13 A. Correct.

14 Q. And there's also no question that there was
15 extensive damage from the hurricane to the building at 620
16 Esplanade?

17 A. There was damage from the hurricane, yes, ma'am.

18 Q. And we heard Scottsdale's own attorney say this
19 morning that they've paid a lot of money. So, I mean, there
20 was extensive damage to this building as a result of the
21 hurricane, correct?

22 A. Yeah. Yeah. I mean, extensive is, you know, in
23 the eye of the beholder. But yeah, I would say it was
24 extensive. Yes, ma'am.

25 MS. BROWN: Okay. I'm going to offer Exhibit 106

1 which is the Scottsdale insurance policy.

2 || MR. WOLFF: No objection.

3 THE COURT: It'll be admitted. Everybody, before
4 you publish to the jury, be sure it's in evidence. I
5 know this has been admitted. Just a warning going
6 forward.

7 || MS. BROWN: Okay.

8 BY MS. BROWN:

9 Q. I'll have you look at Exhibit 106 on your screen.
10 You're familiar with the policy covering the claim here?

11 A. Yes, ma'am.

12 THE COURT: Can you see it right there on the
13 screen, sir?

14 THE WITNESS: I can.

15 THE COURT: Ladies and gentlemen, your screen's on?
16 Sometimes they turn off. Okay. Perfect.

17 || BY MS. BROWN:

18 Q. And you understand that the building at 620
19 Esplanade was a property that housed Homeland Security?

20 A. Yes, ma'am.

21 Q. And it had some specialized construction because
22 there was actually a jail, a small jail, inside this building
23 that they used to hold ICE detainees?

24 A. Yes.

25 Q. Let's talk about this policy. If I could go to

1 Page 4 of the PDF, please. Were you in the room this morning
2 for the voir dire of the jury?

3 A. For the jury selection? No, ma'am.

4 Q. Okay. We had some discussion and I think I heard
5 it in openings as well about premiums so I want to start
6 there and ask you about -- I just want to ask you if this is
7 the premiums that Mr. Odom paid on behalf of Eaux Holdings
8 for coverage for the building at 620 Esplanade.

9 A. This looks like the premium charged.

10 Q. And am I correct that the premiums are based on the
11 amount of insurance that he's purchasing from Scottsdale?

12 A. That's one of the criteria, yes, ma'am.

13 Q. Okay. And there's no dispute in this case that the
14 premiums on behalf of Eaux Holdings were paid, correct?

15 A. No, ma'am, there's no dispute over that.

16 Q. Okay. And we know they were paid because if they
17 were not paid the policy would have been canceled, correct?

18 A. I believe so.

19 Q. And I think -- can we go to Page 7 of the PDF. We
20 see right here, actually, the policy itself says that if the
21 cancellation is for non-payment of premiums it will be ten
22 days after the premium is not received, right?

23 A. That's what it says, yes, ma'am.

24 Q. And that's what happens at Scottsdale, correct?

25 A. I don't handle the cancellations, but I would

1 imagine if the policy says it that's how it's handled.

2 Q. You're not aware of anything in the policy that
3 gives a policy holder like Eaux Holdings the ability to make
4 a partial premium payment, are you?

5 A. I'm not aware of such a provision, no.

6 Q. And in exchange for payment of the premium, Eaux
7 Holdings was purchasing an agreement by Scottsdale, who sold
8 the policy, that they would pay, subject to the limitations
9 in the policy, for damage caused by Hurricane Laura to the
10 building at 620 Esplanade?

11 A. Yes.

12 MS. BROWN: Okay. I'm going to offer plaintiffs'
13 Exhibit 14.

14 MR. WOLFF: Your Honor, we have an objection.

15 THE COURT: You do?

16 MR. WOLFF: Yes, Your Honor.

17 THE COURT: Here's what I need. I need to know
18 what the exhibit is and I need to know what the
19 objection is.

20 MR. WOLFF: May I approach the bench?

21 THE COURT: Yes, on the record.

22 MS. BROWN: False alarm. I'm not to 14 yet. Hold
23 that objection.

24 THE COURT: Let me ask you just so we can -- you
25 have access to their exhibits so when she refers to an

1 exhibit you can quickly pull it up? I'm a paper guy. I
2 used to go hand those, paper version. I'm not used to
3 all this electronic stuff.

4 MR. WOLFF: I'm getting old enough to keep my ears
5 going so I can't multitask on that.

6 THE COURT: Me neither.

7 MR. WOLFF: Oh, we do not have a paper copy.

8 THE COURT: I just want you to be able -- if she
9 says 14, you can look at it quickly and say whether or
10 not you have an objection to it or not.

11 MS. WOLF: Your Honor, we actually have a chart
12 already made. So when she calls out an exhibit number,
13 if we have an objection, we know.

14 THE COURT: Perfect. Thank you. I understand.

15 Okay. I'm sorry, Ms. Brown. Please go ahead.

16 MS. BROWN: I'm sorry for all the confusion.

17 THE COURT: I just wanted to be sure.

18 BY MS. BROWN:

19 Q. This particular policy had limits of 2,035,000 that
20 was the total limit for property damage, correct?

21 A. It's not pulled up in front of me, but that sounds
22 right. I'd refer back to what it says; but yeah, that sounds
23 right.

24 Q. Okay. I'm going to find it. I'll show you a
25 document that we have just for demonstrative purposes. I'm

1 actually going to show you. Does that refresh your memory
2 just that the policy was 2,035,000?

3 A. No, ma'am, the policy's not 2,035,000. The policy
4 limit is 2 million and there are provisions in the policy
5 that provide additional coverage up to 10,000 for increased
6 cost of construction, 25,000 for debris removal.

7 Q. Okay.

8 A. Ultimately, if the building was a total loss, we
9 paid out everything that could be paid, the 2,035,000 is the
10 amount; but that extra 10 and the extra 25 aren't technically
11 part of the policy limit.

12 Q. Okay. Go back to the policy, Page 77. This
13 morning when we were talking with the jury we had the
14 discussion about the mutual obligations under the insurance
15 policy, obligations of Scottsdale, obligations of Eaux
16 Holdings. So I want to go through some of those from the
17 policy with you. Right -- it starts at the bottom here,
18 duties in the event of loss or damage. If you can just
19 scroll. We're going to look at them in more detail. I just
20 want to -- okay. So these eight enumerated items, we're
21 going to go through each; but those are the duties -- what
22 Scottsdale expects of its insured in the event of a loss like
23 Hurricane Laura?

24 A. Yes.

25 Q. Okay. What I've done is taken that and I want to

1 go through each one of these with you. The first duty in the
2 event of a loss is notify the police if a law may have been
3 broken. We can agree that one doesn't apply here, correct?

4 A. I would agree.

5 Q. No. 2, "Give us prompt notice of the loss or damage
6 including a description of the property involved." And you
7 would agree with me that Mr. Odom, on behalf of Eaux
8 Holdings, gave prompt notice of this loss, correct?

9 A. I agree.

10 Q. Okay.

11 MS. BROWN: And just to be clear, I'm going to
12 offer Exhibits 1 and 2.

13 MR. WOLFF: No objection, Your Honor.

14 THE COURT: It'll be admitted.

15 MS. BROWN: And those are -- easier for me to just
16 go to paper.

17 THE COURT: Paper never fails.

18 MS. BROWN: Keep making everybody have to toggle
19 and find things.

20 BY MS. BROWN:

21 Q. Exhibit 1 is a letter on August 30th of 2020
22 acknowledging receipt of a report for the claim on behalf of
23 Eaux Holdings, correct?

24 A. Yes.

25 Q. So the claim was made prior to August 30th of 2020?

1 A. It appears so, yes.

2 Q. And just so there's no confusion, since we've been
3 saying that this claim is against Scottsdale Insurance, I see
4 a Nationwide logo on this letter; and can you tell me why the
5 letter would have come from Nationwide?

6 A. Scottsdale Insurance is a division of Nationwide.

7 Q. Okay. And then just to round out the prompt notice
8 issue, this is a document that was provided to us, Exhibit 2
9 entitled "Property Loss Notice." And again, it shows that
10 the claim was reported by e-mail by someone named Jade Bentz
11 on August 30th of 2020 --

12 A. Yes.

13 Q. -- is that correct?

14 Okay. So we can agree that Eaux Holdings complied with
15 No. 2?

16 A. Yes.

17 Q. Okay. No. 4 is "Take all reasonable steps to
18 protect the covered property from further damage." You're
19 aware that Mr. Odom, on behalf of Eaux Holdings, went to the
20 property and took measures for temporary repairs, he had the
21 roof shrink wrapped, things of that nature to protect it from
22 further damage?

23 A. I'm aware that temporary repairs were done to
24 protect the building.

25 Q. Okay. You're also aware that he hired a mitigation

1 company?

2 A. I am.

3 Q. Okay. Continuing on with what would have been Eaux
4 Holdings' duties, No. 5 says, "At our request, give us
5 complete inventories of the damaged and undamaged property
6 including quantities, costs, values." I read that to pertain
7 more to, like, personal property; but you tell me if
8 that's --

9 A. I think it could be considered either way.

10 Q. Okay. And in this case we looked at these books --

11 A. By either way I mean whether it's personal property
12 or real property. That's what you were asking, right?

13 Q. Right. But within a couple of weeks of the
14 hurricane Mr. Odom did provide Scottsdale with this estimate
15 of damages which we're going to get into, but he did provide
16 this four-volume set itemizing line by line the damage to the
17 property with photographs?

18 A. They provided those books to the independent
19 adjuster we sent out, Monte Jones.

20 Q. Okay. No. 6, "As often as reasonably required,
21 permit us to inspect the property." Nobody from Scottsdale
22 has ever been denied access to this property, correct?

23 A. Not to my knowledge.

24 Q. And you sent several different adjusters out there
25 over the course of the claim?

1 A. Well, we sent several different experts out there.
2 They weren't necessarily adjusters. I think the first person
3 we sent out was Monte Jones. He was an independent adjuster.
4 Other folks we sent out were, you know, experts in their --
5 you know, construction and different things.

6 Q. Okay. But you would agree that Eaux Holdings has
7 permitted inspection of the property every time it was
8 requested?

9 A. Yes, ma'am.

10 Q. Okay. No. 7 says, "Send us a signed sworn proof of
11 loss containing the information we request to investigate the
12 claim." We've talked a little bit and we're going to come
13 back to this proof of loss that was provided; but this
14 requirement is not consistent with Louisiana law, right?
15 That's not actually required for claims in Louisiana?

16 A. No. I think the Louisiana guidelines are
17 different.

18 Q. Okay. And then No. 8, "Cooperate with us in the
19 investigation or settlement of the claim." Again, Eaux
20 Holdings -- if Scottsdale asked, Eaux Holdings accommodated
21 whatever was requested in trying to get this claim adjusted?

22 A. I can't think of anything specifically that they
23 said no to.

24 Q. And that's another point. No. 7, while we're going
25 to get into what's required in Louisiana, it does say that

1 this requirement must be done within 60 days after it was
2 requested. And Scottsdale never requested Eaux Holdings to
3 submit any sort of signed sworn proof of loss?

4 A. Not during the time that I was assigned to the
5 claim.

6 Q. And you're not aware of it having been done?

7 A. I'm not aware of them ever sending one, no, ma'am.

8 Q. Okay. So in addition to paying his premiums, which
9 we've established that he did, Mr. Odom, on behalf of Eaux
10 Holdings, also complied with these eight duties in the event
11 of a loss, correct, that we just went through?

12 A. Yeah. The ones we went through, yes, ma'am.

13 Q. How many claims were you handling in Louisiana
14 after Hurricane Laura?

15 A. I don't recall. I don't recall.

16 Q. Roughly, ten, a hundred, 500?

17 A. Probably -- I really don't remember. It's been a
18 year and a half.

19 Q. Okay. You don't know if it was more or less than a
20 hundred?

21 A. I think I had less than a hundred.

22 Q. Okay. And as part of adjusting claims in
23 Louisiana, you're familiar with the Louisiana law that
24 applies to insurance companies adjusting these sort of
25 claims, correct?

1 A. Yes, ma'am.

2 Q. Okay. And you would agree with me that those laws
3 provide some of the obligations that Scottsdale would owe
4 Eaux Holdings?

5 A. Yeah, I think so.

6 Q. So I want to look at --

7 A. I'm not a lawyer; but yeah, that sounds like my
8 understanding of it. Yes, ma'am.

9 Q. Certainly. But as the desk adjuster on these
10 dozens of claims from Hurricane Laura in Louisiana, you are
11 responsible for ensuring that Scottsdale complies with the
12 Louisiana law governing that process?

13 A. Yes, ma'am.

14 MR. WOLFF: May we approach, Your Honor?

15 THE COURT: Yeah, please.

BENCH CONFERENCE

17 MR. WOLFF: She wants to show without publishing
18 the exhibit the law, and I understood you were going to
19 give that law; but wherever the guidelines on this --

25 MS. BROWN: Correct. That's why I'm going to

1 try --

2 THE COURT: I mean, she has to say that they have
3 so many days. Then y'all are going to have to put on
4 evidence whether you made the payment timely or not.

5 MR. WOLFF: No doubt, but to have the witness talk
6 about what is satisfactory proof of loss or --

7 THE COURT: Here's where I approach that. You can
8 ask him if he thinks that's satisfactory proof of loss.
9 He can say yes or no. He knows or he doesn't. If he
10 doesn't know, you know, I don't know.

11 MS. BROWN: Well, that's why I laid the foundation
12 of --

13 THE COURT: Here's the thing, it's not fair to ask
14 him, like, a legal conclusion. You can't ask him do you
15 agree under the law of Louisiana this is -- that is --
16 you know, you can't ask it like that.

17 MS. BROWN: Don't intend to. This is going to be,
18 like, a handful of questions and then I'm moving on.

19 THE COURT: He's -- at some point he's got to say
20 whether that's -- the company thinks that's satisfactory
21 proof of loss or not. Now, whether it complies with
22 Louisiana law, that's for the jury to decide.

23 MR. WOLFF: Okay.

24 THE COURT: I mean, he's got to decide whether for
25 him -- for the company whether that's --

1 MR. COX: May I just throw something out?

2 THE COURT: Sure.

3 MR. COX: We've researched it and it's acceptable
4 for the judge to instruct the jury on the law any time
5 in the trial. It doesn't have to be done as ordinarily
6 it is, like before they deliberate.

7 THE COURT: I don't disagree with that.

8 MR. COX: That's a biggie. This proof of loss
9 thing is a biggie in this case, and the jury doesn't
10 know what it is. We don't want to misstate it. We'd
11 rather you state it.

12 MR. WOLFF: If you're going to put it up, put it
13 up. I just want to know. I don't want to get up and
14 object, but I need to know where this is going. So this
15 is why --

16 MS. BROWN: At this point I need to ask him if he's
17 aware --

18 THE COURT: Let me ask you --

19 MS. BROWN: -- of what the law says.

20 THE COURT: He's correct. I can instruct the jury
21 technically any time but --

22 MR. WOLFF: Right in the middle of my guy's
23 testimony, I object.

24 THE COURT: Yeah, I don't think that's really fair
25 at this point to him to do that. Only reason I'm saying

1 it is if you wanted some limiting instruction to the
2 jury, I'd be open to it; but I don't really know what
3 I'd tell them. I mean, she's going to -- to put it in
4 context, she's got to lay some foundation and she's
5 going to have to refer to the statute.

6 || MR. WOLFF: I understand.

7 THE COURT: I'm going to instruct them on the law
8 as to what that statute means and how you apply it, and
9 they'll apply it to the facts. You know, that's the
10 problem with this whole statutory penalty thing. It's a
11 legal question but there's a factual issue so, you know,
12 it kind of crosses the line between me and -- because I
13 decide, you know, part of it. If the jury determines
14 Scottsdale's in bad faith then, you know, I'm going to
15 do the bulk of the calculations on that, not the jury.
16 We'll just have to do it.

17 I don't think there's been a lot of trials on this,
18 to be quite honest with you. There's cases out there,
19 but I don't know how many's really went to trial.

20 Hey, look, if you feel like you need to object,
21 object. Put it on the record.

22 || MR. WOLFF: I just don't --

23 THE COURT: No. I understand.

PROCEEDINGS CONTINUED

25 THE COURT: Let me ask you this, what you're fixing

1 to show, has it been marked?

2 MS. BROWN: I don't intend --

3 THE COURT: It's just demonstrative?

4 MS. BROWN: It is, yes.

5 THE COURT: You okay with it? You've seen it?

6 MR. WOLFF: Yes, sir.

7 THE COURT: I hate that screen. We're going to get
8 that thing out of here before long. All right. Go
9 ahead.

10 BY MS. BROWN:

11 Q. All right. Mr. Lock, I was asking about your
12 familiarity with the laws governing adjustment of claims in
13 Louisiana. So what I've got here in front of you is
14 Louisiana Revised Statute 22:1892 and what it says -- it was
15 written by lawyers. It has a lot of words in it, but what
16 I've highlighted is the important parts that I want to ask
17 you about. It says, "All insurers shall pay the amount of
18 any claim due any insured within 30 days after receipt of
19 satisfactory proof of loss from the insured or any party in
20 interest." Were you familiar with this statute when you were
21 adjusting claims after Hurricane Laura?

22 A. Yes, ma'am.

23 Q. And you were aware of that 30-day deadline
24 contained in the statute?

25 A. Yes, ma'am.

1 Q. Okay. As far as satisfactory proof of loss, were
2 you -- we talked about this a little bit earlier when we
3 talked about the signed sworn proof of loss. You understand
4 in Louisiana the satisfactory proof of loss is a flexible
5 requirement?

6 A. Yes.

7 Q. Okay. And it doesn't have to come in a specific
8 form. It can come from your adjuster. It can come from the
9 insured. It can come from all sorts of different things.
10 Right?

11 A. Yes, ma'am.

12 Q. It's just as long as the insurance company has
13 enough information to act on the claim, that's satisfactory
14 proof of loss under Louisiana law?

15 A. Yes, ma'am.

16 Q. Okay. Can I look at the next part of this statute.
17 And the second part of the statute says that the failure to
18 make such payment within 30 days after receipt of such
19 satisfactory written proof and demand therefor or the failure
20 to make a written offer to settle a property damage claim,
21 then there's a lot of legalese, when that failure is found to
22 be arbitrary, capricious, or without probable cause shall
23 subject the insurer to a penalty. And you were aware when
24 you were adjusting claims after Hurricane Laura that the
25 failure to make timely payment under the statute could result

1 in a penalty in addition to the amount of the loss of
2 50 percent?

3 A. I didn't recall the percentage; but I was aware
4 that it could result in a penalty, yes, ma'am.

5 Q. Okay. You're also aware that the obligations of
6 Scottsdale contained in the Louisiana bad faith statute
7 continue after litigation is filed?

8 A. I'm sorry. Please say that again.

9 Q. Scottsdale's obligations to continue to adjust the
10 claim properly continue even if Eaux Holdings files suit,
11 correct?

12 A. I would assume so, yeah. I don't have specific
13 knowledge of that. I mean, we need to continue handling the
14 claim until it's concluded.

15 Q. Okay. Let's talk about the claim now. I want to
16 look at some of the photos of the damage to the property now.
17 These four volumes from Skyline, to be fair, a lot of them
18 are photographs of damage to the property, correct? We're
19 going to look at some in detail, but I'm just --

20 A. They're mostly photos, yeah.

21 Q. Okay.

22 A. They're not labeled, as I recall; but I never
23 actually got to see the books. They were sent to me
24 digitally eventually.

25 Q. Okay. What you saw you looked at digitally on your

1 computer?

2 A. Yes, ma'am.

3 MS. BROWN: Okay. I'm going to offer and would
4 like to offer all at one time Exhibits 70 through 81.
5 They're all photographs.

6 MR. WOLFF: No objection, Your Honor.

7 THE COURT: It'll be admitted.

8 BY MS. BROWN:

9 Q. And so what I'd like to do now, Mr. Lock, is I'm
10 going to scroll through some photographs of damage to the
11 property and just have you refresh yourself with the claim
12 and then I'll ask you some questions. Okay.

13 A. Okay.

14 Q. It's a little awkward doing it this way. You
15 ready? Okay. And I think that one -- on Exhibit 72, I think
16 that might be to the side. Those look like ceiling tiles.
17 But in this picture here, Exhibit 73, you recognize that as a
18 crack in the exterior paneling?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. I think so. Not very -- I mean, can you zoom out
22 on the picture? Yeah. Yeah. That's -- yeah, right above
23 the window. Yes, ma'am.

24 Q. And Photo 74, this is just a picture inside one of
25 the offices in the building; is that right?

1 A. It looks like it, yes, ma'am.

2 Q. Okay. And we can see the water damage on the
3 ceiling and things of that nature; is that right?

4 A. Yes.

5 Q. And this is another -- Exhibit 75 is another
6 picture of water damaged ceiling and looks like light
7 fixtures as well?

8 A. Yes.

9 Q. Looks like an up-close of some exterior cracking?

10 A. It does, yes.

11 Q. Okay. Broken window?

12 A. Yep.

13 Q. Another broken window?

14 A. (No audible response.)

15 Q. This is one of the sides of the building; is that
16 right?

17 A. Looks like it, yeah.

18 Q. One more. This is another interior photo; is that
19 right?

20 A. (No audible response.)

21 Q. Now what I'd like to do is walk through a timeline
22 on this claim and see if you and I can agree on some things.

23 MS. BROWN: At this point I would like to offer
24 Exhibits 4 through 7 which are the four volumes of the
25 Skyline estimate.

1 MR. WOLFF: We need to approach, Your Honor.

2 THE COURT: Okay. Sorry, ladies and gentlemen.

3 **BENCH CONFERENCE**

4 THE COURT: What's the problem? We'll find out.

5 MS. BROWN: Is this coming out of my time?

6 THE COURT: The clock's on pause.

7 MR. WOLFF: So here we are right where I thought
8 we'd be. This is an estimate. There's no RCV
9 calculation here. They've referred to it consistently
10 as a proof of loss. The foundation needs to be laid by
11 Major and not this witness. So there are a number of
12 statements in there that we're going to object to
13 singularly. So to just put the whole thing in evidence
14 is essentially letting Major put all of that stuff in.
15 Plenty of it to object. So I don't know how to go
16 through the --

17 MS. BROWN: Your Honor, Lock received that four-
18 volume set as part of the claims file. It's what he
19 received --

20 THE COURT: Let's just --

21 MS. BROWN: -- whether they like what's in it or
22 not.

23 THE COURT: What's your base -- what's the
24 objection to what's in it, I mean, in terms of
25 statements?

1 MR. WOLFF: Well, there's multiple books. There
2 are -- I don't have any problem with the photos. No
3 problems there. It's the statements from Major about
4 this being proof of loss, which it's not.

5 THE COURT: That's what the jury's going to decide.

6 MR. WOLFF: Well, there's a summary of evidence.
7 They've got to lay a foundation here with him. They
8 can't do that. They can say he received a bunch of
9 material but --

10 THE COURT: I'm tending to agree this is probably
11 not the right way unless you agree to let him put it in.

12 MR. WOLFF: I don't.

13 THE COURT: I'm going to just tell you that they'll
14 get it in with the expert.

15 MS. WOLF: That's why we kind of have -- because
16 you've already ruled on this, Your Honor, that Major
17 cannot refer to it as a proof of loss which is what
18 he --

19 THE COURT: I don't think that's what I ruled. I
20 said he can't give legal opinions. I never said he
21 couldn't --

22 MS. WOLF: What I recall is --

23 THE COURT: I'd have to go back and read my --

24 MS. WOLF: Every time he referred to it in his
25 deposition he calls it proof of loss. If the jury hears

1 that all day long, he --

2 THE COURT: That's his opinion.

3 MS. WOLF: Under Louisiana law, he cannot do that.

4 THE COURT: I disagree with you.

5 MR. WOLFF: Listen --

6 THE COURT: I disagree with you. The question
7 before this jury is going to be did they give
8 satisfactory proof of loss and did your client pay on
9 time. That's the bottom line. This expert can get up
10 here and say, "Hey, I went through this. This, to me,
11 meets the satisfactory proof of loss." That's his
12 opinion.

13 MR. WOLFF: He can't say --

14 THE COURT: You know, we can cross that bridge; but
15 I think he can probably say it's -- we'll get there in a
16 minute but --

17 MR. WOLFF: So he -- I think to lay the foundation
18 he needs to be the one --

19 THE COURT: I agree, I think, to put this in. This
20 witness, he didn't write this, he didn't produce it, he
21 didn't create this.

22 MS. BROWN: Even though he received it and made
23 it --

24 THE COURT: It doesn't matter. He can't
25 authenticate it. He can't lay the foundation for this.

1 He didn't have anything to do with creating it, writing
2 it, preparing it. He just reviewed it. Hell, I can
3 review it but doesn't mean it comes in.

4 MS. BROWN: But I can ask him about it?

5 THE COURT: You can ask him if he received it. I
6 guess you can ask him if he looked at it. I guess you
7 can ask him if he relied on it. But again, he's not the
8 right one to put it in. I know it seems trivial because
9 I think it's going to come in at some point, but that's
10 the point.

11 MS. BROWN: I got you.

12 THE COURT: If we're going to go through the rules
13 of evidence, he's probably not the right one.

14 MS. BROWN: Okay.

15 MR. WOLFF: Thank y'all.

PROCEEDINGS CONTINUED

17 || BY MS. BROWN:

18 Q. Okay. So what I'd like to do -- we heard some
19 discussion in opening statements about a timeline of
20 information that Scottsdale had and so what I'd like to do is
21 you and I are going to create a timeline to see if we can
22 agree to some things. We talked about this four-volume
23 estimate that I have sitting here from Skyline. And you
24 would agree that Scottsdale received this -- its adjuster,
25 Monte Jones, received this on September 23rd of 2020?

1 MR. COX: 15th.

2 BY MS. BROWN:

3 Q. September 15th of 2020.

4 A. I'd have to see the date of my notes, but that does
5 sound correct.

6 THE COURT: Are y'all okay? Y'all need a restroom
7 break? Okay.

8 MS. BROWN: Okay. I'm going to offer Exhibit 27,
9 which is the claims notes.

10 MR. WOLFF: No objection.

11 THE COURT: You know what, Ms. Brown, while you're
12 doing that, I'm going to ask the jury to step out for a
13 minute so we can have a discussion, if y'all don't mind.
14 I think it might speed things up. Ladies and gentlemen,
15 let's take a ten minute break. Y'all go to the
16 restroom. Okay. All rise for the jury.

17 (Jury exits courtroom.)

18 THE COURT: Let's talk about this. Here's the
19 dilemma, Mr. Wolff, Ms. Brown. The term "satisfactory
20 proof of loss" is a term of art under the statute.
21 Okay. The jury is going to be instructed at the end of
22 this trial by me as to the law on the statute and as to
23 the law as to what that term means. Okay. So as I'm
24 sitting here thinking after our objection and our
25 sidebar, I think the appropriate approach is that is an

1 estimate, Ms. Brown. That four-volume set is an
2 estimate, correct?

3 MS. BROWN: Correct.

4 THE COURT: It is going to be for this jury to
5 decide whether that estimate constitutes satisfactory
6 proof of loss. That is their -- that is in their
7 purview, not mine, after I instruct them on the law.
8 Are we on the same page?

9 MR. WOLFF: If that's properly admissible.

10 THE COURT: We're going to get there, Mr. Wolff.

11 MR. WOLFF: I know.

12 THE COURT: You're putting the cart before the
13 horse.

14 MR. WOLFF: Sorry.

15 THE COURT: So what I'm telling y'all is this, as
16 we've discussed on the side at the sidebar. Again, I
17 think it's going to be their job to decide whether that
18 is satisfactory proof of loss. Ms. Brown, during
19 closing arguments, whatever, Mr. Cox, you, y'all can
20 argue and say all day long to this jury that is. I'm
21 sure you're going to say it isn't. I don't know.
22 Doesn't matter to me. So in that context, that's how
23 we're going to approach this. Okay.

24 Again, I think the more I thought about it,
25 Mr. Major should not get up here and say in his opinion

1 that's a -- I think that's a legal conclusion which he's
2 not, as an expert, allowed to give. That will be for
3 the jury to decide. He can say, "It's a complete
4 estimate, encompasses all the damages." And you can
5 argue in closing arguments, "We believe under the law as
6 the judge will instruct you that this met the
7 satisfactory proof of loss requirement."

8 I just want to get us on the same page as we go
9 through this. Mr. Cox, you want to -- any issue with
10 that? Ms. Brown? Mr. Wolff?

11 MS. BROWN: None.

12 MR. WOLFF: No, Your Honor.

13 THE COURT: Okay. I think that -- because I don't
14 want all these sidebar about this back and forth.
15 While we're at it, while they're out, what is the
16 argument on whether -- on the admissibility of this? I
17 don't think I've ruled on that. I think all I've ruled
18 on was Mr. Major cannot give a legal opinion, which no
19 expert can give a legal opinion.

20 MR. COX: Judge, I'll suggest this. If you rule
21 that that estimate isn't admissible --

22 THE COURT: I'm not saying that.

23 MR. COX: -- you can dismiss 3,000 cases.

24 THE COURT: I never said it was inadmissible,
25 Mr. Cox. You're getting ahead of yourself. All I said

1 was they have an argument that there are things
2 contained in that estimate that are buried in there that
3 may be inadmissible, and I'm trying to vet this now
4 before we get there. I don't think I had a motion in
5 limine on this, did I?

6 MR. WOLFF: As to the estimate, the whole thing
7 is -- you said it's irrelevant.

8 THE COURT: No, it's not irrelevant, Mr. Wolff. It
9 is an estimate of damages of this property by their
10 expert. It is not irrelevant. Don't waste my time with
11 that. Now, the question's going to be is there a
12 portion of it -- I'm hearing your argument that you
13 think there's some stuff in there that's not admissible.
14 What is not admissible?

15 MR. WOLFF: I think, first off, he's got to
16 establish that he was authorized to act as a public
17 adjuster; and I don't know that he can do that, number
18 one. Number two, he doesn't provide actual cash value
19 ever. And number --

20 THE COURT: Well, you'll pick him apart on
21 cross-examination on that point.

22 MR. WOLFF: Right, but first he's got to
23 authenticate and we're there.

24 THE COURT: He can authenticate.

25 MR. WOLFF: Secondly, he's got to prove that he's

1 authorized to submit all of that; and I don't know that
2 he can do that.

3 THE COURT: I'm not following where you're going
4 with that. Are you trying to get into the public
5 adjuster statute?

6 MR. WOLFF: Yes.

7 THE COURT: I think one of the exceptions under the
8 public adjuster statute is if he's retained by counsel,
9 if counsel's involved. I can't remember. I got to go
10 back and look at that statute.

11 MR. WOLFF: Counsel was not involved. Counsel
12 didn't get involved until -- I believe it was in
13 November and this occurred on the day after the
14 hurricane.

15 THE COURT: I've ruled on this issue before in
16 another case. I just can't quite remember the
17 parameters of my ruling on it. I'll find it, trust me,
18 because I'll be consistent.

19 MS. BROWN: The fact of the matter is, Your Honor,
20 as we said --

21 THE COURT: Beyond that, I mean, forget all this
22 about whether he's a public adjuster or not. Is
23 there -- what is it in there -- I mean, it's an
24 estimate. I know you don't agree with it, but you're
25 saying there's stuff in there. I'm trying to get to the

1 point here. What's in there?

2 MR. WOLFF: I've got to go through, to go page by
3 page. I cannot do that right now. I can do that before
4 his testimony --

5 THE COURT: I'm sure you deposed the guy.

6 MR. WOLFF: No. Mary Ann did.

7 THE COURT: I know Ms. Wolf did a tedious job
8 deposing this guy.

9 MR. WOLFF: She did. We can go articulate -- I
10 just think it's appropriate to have it authenticated and
11 then go from there.

12 THE COURT: No, no, no. I'm with you. That's why
13 I said a minute ago he's not the proper witness to put
14 it in. He's not. He can't authenticate it. But I'm
15 just trying while I have the jury out -- it's so much
16 easier than having the sidebars. I'm trying to get
17 to -- trying to find the meat on the bone here,
18 Mr. Wolff.

19 MR. WOLFF: I understand a hundred percent, and I
20 think we're charting new territory on all of this going
21 Delta. And I appreciate the position everyone's in,
22 particularly you having to make rulings that are going
23 to guide everything else, so I'm just taking it slowly
24 and methodically. And I think we're learning that he
25 can't give legal opinions just like he's not going to

1 give -- so we're good there. Get it authenticated.
2 I've got challenges to Mr. Major. That's not a secret.

3 THE COURT: I don't remember a *Daubert* motion on
4 him.

5 MR. WOLFF: Oh, no, I filed plenty of *Daubert*
6 motions, yeah.

7 THE COURT: Yeah, but what I'm saying is I think
8 I -- I deferred those to the merits, did I not?

9 MR. WOLFF: Yes, you did.

10 THE COURT: But this thing about a public adjuster,
11 I'm trying to get -- I get some of you don't like his
12 opinions and all that, but what is this issue about him
13 being a public adjuster? I'm trying to get -- what are
14 you talking about?

15 MR. WOLFF: He's got to have authority to do all
16 that. He's got to follow the public adjuster statute.
17 I don't think he did. I don't think he did.

18 THE COURT: Well, you thinking he didn't is not
19 enough. I mean, you know, I don't care what you think.
20 I mean, you've got to prove it. I think you're going to
21 have to cross-examine him on it.

22 MR. WOLFF: That's what I was going to do, Your
23 Honor.

24 THE COURT: There's so many public -- I've ruled on
25 this whole public adjuster thing before and I've got to

1 go back and see what I did on it, but there's some
2 exceptions to that whole public adjuster statute. It's
3 another one of those statutes that probably needs to be
4 tweaked. You know, it's kind of pretty vague but -- all
5 right. We'll cross that bridge when we get to
6 Mr. Major.

7 MR. WOLFF: Right.

8 THE COURT: Okay. She's going to question him
9 about it. As we discussed, you can't put it in. You're
10 not going to be able to show any of it to the jury until
11 it's admissible. I guess you showed a couple of the
12 pictures. You okay with the pictures right now?

13 MR. WOLFF: No problem at all.

14 THE COURT: You can show the pictures out of it.
15 Does that make sense?

16 MS. BROWN: Well, it makes sense.

17 THE COURT: I know you want to put it in, but you
18 can't put it in with him.

19 MS. BROWN: The total, the amount of this estimate,
20 was a number that he had at a certain point in time that
21 goes --

22 THE COURT: You can ask him did he receive it, did
23 he look at it, does he remember this from it. If he
24 remembers, he remembers. I doubt very seriously he
25 brought his file with him.

1 MR. WOLFF: That's part of the foundation, that
2 estimate. It's as if he's going to come in as a
3 construction expert. He's got to lay that foundation to
4 put that estimate --

5 THE COURT: Yeah, but your guy here received it --

6 MR. WOLFF: I agree.

7 THE COURT: -- and he looked at it.

8 MR. WOLFF: Agreed.

11 MR. WOLFF: Yes, sir.

12 THE COURT: So if that's -- you know, he doesn't
13 necessarily have to have that in evidence. Because he
14 put it in his file, he can testify about what he
15 recalls.

16 MR. WOLFF: Yes, sir.

17 THE COURT: But you're technically correct on the
18 admissibility of the document.

19 MS. BROWN: Understood.

20 THE COURT: He's technically right. Okay. Anybody
21 want to go run and take a quick break? Okay. DD, my
22 court reporter, needs a quick break. Every take about
23 five minutes. We'll come right back.

24 || (Recess is taken.)

25 THE COURT: We're going to vet this out because we

1 need to -- Mr. Major's going to be called, I assume,
2 pretty soon?

3 MS. BROWN: Yes, sir.

4 THE COURT: Okay. Mr. Wolff, let's just go ahead
5 and we're going to deal with his admissibility right
6 now.

7 MR. WOLFF: All right.

8 THE COURT: So what is your specific objection to
9 Mr. Major? He wrote this, did he not?

10 MS. BROWN: Yes, sir.

11 THE COURT: What's your objection?

12 MR. WOLFF: I don't think he was authorized to
13 serve as public adjuster in this case because he did not
14 have a contract that authorized him to do it.

15 THE COURT: What kind of contract does he need?

16 MR. WOLFF: One that authorizes him to
17 specifically --

18 THE COURT: You're saying he's not licensed in
19 Louisiana?

20 MR. WOLFF: I don't think he had a contract in this
21 case.

22 THE COURT: I'm still not following you, what
23 you're talking about.

24 MR. WOLFF: His contract doesn't authorize him to
25 do work for this claim against this carrier.

1 THE COURT: Why does one need a contract?

2 MS. BROWN: He does actually have a contract.

3 MR. WOLFF: Not for this claim and not for this
4 carrier. And the --

5 THE COURT: What do you mean not this carrier? He
6 doesn't work for you.

7 MR. WOLFF: He has to have a contract -- under 1407
8 he has to have a written contract with very specific
9 details. I don't think he has it.

10 THE COURT: What's 1407?

11 MR. WOLFF: If I may, Your Honor, so under 22:1691
12 it specifies the duties and restrictions.

13 THE COURT: Go ahead.

14 MR. WOLFF: In 1700, 22:1700(A) -- actually, I'm
15 sorry, they must -- under 22:1703(A) they have to
16 have -- they cannot have a contingent --

17 THE COURT: I agree they can't have a contingency
18 contract. I agree with that a hundred percent.

19 MR. WOLFF: I think he does. But aside from that,
20 under 1704 he's got to have a written contract.

21 THE COURT: Under which one?

22 MR. WOLFF: 1704. 22:1704.

23 THE COURT: Maybe he does. He has a written
24 contract. She's got one right there.

25 MR. WOLFF: Not on this claim.

1 THE COURT: What do you mean "not on this claim"?

2 MS. BROWN: Would you like me to put it up, Judge?

3 THE COURT: Let me ask you: Who's the contract
4 with, then?

5 MR. WOLFF: It's with --

6 MS. BROWN: Four Eaux, LLC, J. Odom, and against
7 Scottsdale Insurance.

8 THE COURT: Where is the property? 620 Esplanade.

9 MR. WOLFF: Where is that? No, no. I don't have
10 this document.

11 MS. BROWN: We've provided it as one of our
12 exhibits. We provided it. And it was also produced in
13 Skyline's subpoena.

14 MR. WOLFF: Okay. Now I really have a problem
15 because the -- oh, wow. So --

16 THE COURT: Enlighten me, Mr. Wolff.

17 MR. WOLFF: So I need another document.

18 MS. BROWN: And I can probably go ahead and tell
19 you what he's going to show you and explain why it
20 exists.

21 THE COURT: Let him whip it out.

22 MR. WOLFF: Well, no, here's the problem, Your
23 Honor. We got notification letters, and I'll let you
24 look at these. They've been altered.

25 THE COURT: They've been what?

1 MS. BROWN: Said they've been altered.

2 MR. WOLFF: I think they have. I'm fine for you to
3 rule on this now because --

4 THE COURT: Well, I think I have to because this
5 whole case is hinging on, I think, this whole
6 four-volume set as well as Mr. Major being able to put
7 it on. That's a serious accusation.

8 MR. WOLFF: I don't know. I needed to ask because
9 I saw this when I was preparing. I have a notification
10 letter that relates to that claim number which isn't our
11 claim number. Okay. And then I have another
12 notification letter that relates to our policy. But the
13 problem is, and you can do this yourself, it's been
14 copied over and things are added.

15 THE COURT: Let me see it.

16 MS. BROWN: If I may, Your Honor, when Mr. Major,
17 and he'll testify to this, came to town --

18 THE COURT: I'm sure --

19 MS. BROWN: -- the day after the hurricane Mr. Odom
20 owned multiple properties. He gave him a different
21 policy, thought it was the policy for this property.
22 They signed a new contract. He has a valid contract
23 since 8/28/20 for this property and this claim. And I
24 am offended by the accusation.

25 MR. WOLFF: Well, I need to understand what's going

1 on.

2 MS. BROWN: Well, you should have asked before now.

3 MR. WOLFF: It's been copied over. If you hold
4 those up to the light, Your Honor, there's no way the
5 signatures on one of them is original. One of them's
6 been copied over and things changed.

7 THE COURT: I don't see that, Mr. Wolff.

8 MR. WOLFF: Hold them up to the light.

9 THE COURT: I'm not holding it up to the light. I
10 don't see it. You better have some good proof that this
11 has been altered. That's a serious accusation. I don't
12 see that that's been altered. All I see is there was
13 added of E-A-U behind -- on the top line. That's all I
14 see that's changed on those two and it was probably a
15 clarification. That's the way I see that.

16 MR. WOLFF: If that's what it is, then that's what
17 it is; but these documents are the same signatures --
18 I'm sorry.

19 THE COURT: Listen, you want to do this? Here's
20 what we're going to do. When he gets on the stand you
21 can confront him with both of them. You can ask him if
22 it's been altered. You can ask him if he signed two of
23 them. You can ask him anything you want about it. But
24 as we sit right here there's no proof to me that there's
25 been anything altered on that document other than there

1 has been, to me, a clarification behind the top line
2 where they put in parentheses "Eaux," E-A-U-X. That's
3 it.

4 MR. WOLFF: I understand, and if that's --

5 THE COURT: And I'm going to tell you he can
6 testify under the law as a public adjuster because under
7 22:1693, just so we can have it on the record, under
8 Section E, notwithstanding Subsections A through D of
9 this section, a license as a public adjuster shall not
10 be required of any of the following. No. 2 is a person
11 employed only for the purposes of obtaining facts
12 surrounding a loss or furnishing technical assistance to
13 a licensed public adjuster or a licensed attorney.
14 Licensed attorney.

15 MR. WOLFF: They hadn't retained him.

16 THE COURT: Doesn't matter. He's offering
17 technical assistance. Doesn't say he has to retain
18 them. Says has to be offering technical assistance to a
19 licensed attorney. So he can testify.

20 MR. WOLFF: And I understand. I appreciate your
21 ruling, Your Honor. But the issue is this was all
22 submitted before their attorney was involved.

23 THE COURT: Listen, Mr. Wolff, let's talk
24 practicalities here. Okay. There were public adjusters
25 floating around Lake Charles like bees on a flowering

1 honey tree. Okay.

2 MR. WOLFF: Yes, sir.

3 THE COURT: And a lot of these guys generated
4 reports and then subsequently lawsuits were filed.
5 Attorneys then retained these people for their technical
6 expertise. I think that's perfectly okay under the
7 statute. I mean, that's just the way it is and that's
8 the way it all fell out. I mean, I don't think it says
9 he has to be retained before or after. That's not what
10 the statute says. As I said earlier, these statutes,
11 poorly written. But you know me, Mr. Wolff, you've said
12 it before, I'm a constitutionalist and I'm a textualist.
13 It says what it says.

14 MR. WOLFF: I appreciate your ruling. Got that
15 down. And I'll --

16 THE COURT: Okay. You can make your objections and
17 they're noted for the record here --

18 MR. WOLFF: Fine.

19 THE COURT: -- but he's going to be allowed to
20 testify as a public adjuster and he will be -- and then
21 you can make -- here's what I would ask. I think you
22 need to redact out of those four volumes anywhere where
23 he talks about satisfactory proof of loss, that's a
24 legal conclusion, if you're going to put that in
25 evidence.

1 MS. BROWN: I don't think there's anything in there
2 that says that. I think it's an estimate and
3 photographs.

4 THE COURT: Then we're fine.

5 MS. BROWN: If you have something specific you'd
6 like to point me to this evening, I'm happy to look at
7 it.

8 MR. WOLFF: It's mostly an estimate. I do object
9 to it as an estimate, but I appreciate your ruling.

10 THE COURT: One man's estimate is another man's --

11 MS. BROWN: Satisfactory proof of loss.

12 THE COURT: Okay. I appreciate -- hey, you're
13 doing a diligent job, Mr. Wolff. I commend you, but I
14 don't agree with you --

15 MR. WOLFF: I understand.

16 THE COURT: -- on this one. Okay.

17 MR. WOLFF: I got it. Thank you.

18 THE COURT: I just wanted us to deal with it now.
19 I don't want to be bringing the jury in and out. I
20 think we have a better feel of the lay of the land.
21 Okay.

22 MR. WOLFF: Thank you, Your Honor.

23 THE COURT: Are we ready to bring the jury back in?
24 Okay. We can get the jury now.

25 || (Jury enters courtroom.)

1 THE COURT: Thank you, ladies and gentlemen. All
2 right. Ms. Brown, please proceed.

3 BY MS. BROWN:

4 Q. Mr. Lock, I'll try to move us along. We were
5 talking about the Skyline estimate here that I have on the
6 podium and when you received it. You would agree this
7 estimate was provided to Scottsdale's independent adjuster,
8 Monte Jones, at his inspection in September 2020?

9 A. That is correct.

10 Q. Okay. And I want to talk to you a little bit just
11 about -- you eventually received these volumes from Mr. Jones
12 and from Skyline, correct?

13 A. I never received physical copies. I received
14 digital copies of files from the public adjuster's assistant
15 about a week or so maybe after we started asking for digital
16 copies.

17 Q. Okay. So did you review those digital copies?

18 A. I did.

19 Q. Okay. And the estimate that's contained in the
20 first volume of these four is -- you're familiar with the
21 software program Xactimate?

22 A. Yes, ma'am. I'm a level two certified Xactimate
23 user.

24 Q. What is Xactimate for the jury?

25 A. Xactimate is a computer program that allows

1 somebody to create a repair estimate for a building. It's
2 generally -- you can look up any ole thing that needs to be
3 done to a building. Right. So you can say shingles and it
4 says, "Okay. What kind of shingles? You want them
5 individually? You want them by the bundle? You want them
6 with felt? You want them without felt? You want just the
7 materials? You want just the labor?" It's a very good
8 program when used correctly. Most insurance companies use
9 it.

10 Q. Scottsdale -- I'm sorry. Scottsdale uses it,
11 correct?

12 A. That's correct.

13 Q. And it provides some level of consistency in your
14 preparation of estimates?

15 A. Uh-huh.

16 Q. And Xactimate is the program that Skyline used in
17 the estimate that you were provided, correct?

18 A. Yes.

19 Q. And do you recall that was a 152-page estimate that
20 you got from Skyline?

21 A. That sounds about right. I'd have to see the page
22 number to say for sure, but that sounds about right.

23 Q. Okay. Do you recall it had over 1800 line items of
24 damage?

25 A. I don't recall a specific number, but it was

1 lengthy.

2 Q. Okay. Do you recall the ultimate estimate of
3 damage being \$2,196,188.79?

4 A. That sounds about right.

5 Q. Okay. So we're going to say -- Monte Jones went to
6 the property on December 15th; is that what you recall?

7 A. That sounds right, yes.

8 Q. So I'm going to put 9/15/20. Oh. I'm sorry. Can
9 I be on this machine?

10 Now, just before we took our break I believe that I
11 offered Exhibit 27, the claims log. I want to ask you about
12 your conversation with Monte Jones regarding his inspection.
13 Am I correct, the claims log, these notes that we're going to
14 look at, these are entries? Every time something significant
15 happens in the file you, Adam Lock, will put the date and the
16 time and a summary of what you did in the file; is that fair?

17 A. I'm sorry. Say it again.

18 Q. Okay. So the claims log, just so the jury knows
19 what we're about to look at, is a computer program at
20 Scottsdale?

21 A. Yes.

22 Q. You input -- every time you do something of any
23 substance on the claim you or anyone -- I mean, there's other
24 people that worked on the claim. But you would put your name
25 as here, Adam Lock, on September 17th of 2020 at 2:18 p.m.

1 and then the entry above that is what you did on that date
2 and time; is that right?

3 A. That's correct.

4 Q. So we have to work backwards a little bit. So now
5 I want to look at what you did on September 17th, 2020, at
6 2:18. This is a long entry so I got to go back two pages,
7 and I'm on Page 12 of the claims log at Exhibit 27. I want
8 to start -- this is the beginning of that entry and it says,
9 "Called IA, Monte Jones." That's the independent adjuster
10 hired by Scottsdale to inspect the property?

11 A. Correct.

12 Q. And on the 17th, this would have been a phone call
13 with him after his inspection?

14 A. Yes.

15 Q. Okay. Very first thing, the public adjuster,
16 that's Skyline, provided him with 800 pages of documents.
17 That's what we just established, correct?

18 A. Yes, ma'am.

19 Q. He goes on to tell you about the tenant on the
20 first floor being Homeland Security, which we talked about,
21 correct?

22 A. Yes.

23 Q. Now, tell me what -- I'm going to have you read
24 that first paragraph for the jury about what Monte Jones told
25 you about the damage to the property after his inspection.

1 A. You said the first line?

2 Q. Yes, please.

3 A. It says, "The roof is heavily damaged and the
4 interior was damaged by rainwater. All upper levels and
5 lower levels will have to be taken down to studs to do the
6 repairs. He hasn't run the numbers but thinks it might be
7 worth tearing down the building and starting over."

8 Q. Now, you would not have typed this into the claims
9 log if someone had not told you this information, correct?

10 A. Correct.

11 Q. You did not make this up?

12 A. No, ma'am.

13 Q. This came to you from Monte Jones?

14 A. This is what Monte Jones told me, yes, ma'am.

15 Q. Okay. And then there's some more details about the
16 property, but I want to go down to the next highlighted area.
17 The PA, again, that's the public adjuster, that's Skyline,
18 told IA, that's Monte Jones, correct? Is that correct?

19 A. Yes.

20 Q. So Skyline told Monte Jones that they believe the
21 cost of repairs will exceed 2 million?

22 A. That's what was reported to me.

23 Q. And that's consistent with the estimate that they
24 provided, that Skyline provided?

25 A. Yes.

1 Q. Okay. The IA, now, again, that's the independent
2 adjuster, Monte Jones, for Scottsdale, correct, IA?

3 A. Yes.

4 Q. "IA recommends we retain a consultant that can
5 assist with putting together a legitimate estimate. IA
6 thinks the loss is at least 1.5 million." Did I read that
7 correctly?

8 A. That's what it says, yes.

9 Q. Again, Monte Jones told you that information and
10 that is why it is in the claims log, correct?

11 A. Yes.

12 Q. Again, you didn't make that up?

13 A. No, ma'am.

14 Q. Okay. So let's go back to this little timeline
15 we're keeping. I'll say on 9/17, that's when you talked to
16 Monte Jones. Monte Jones. And he said at least 1.5 million.
17 But if I put 1.5 million here, it's consistent with what he
18 thought on that date?

19 A. Yeah. My understanding was that it was an
20 off-the-cuff number; but yes, ma'am, that's what he told me.

21 Q. Now, at this point no payments had been made to
22 Eaux Holdings, correct?

23 A. That's correct.

24 Q. The first payment -- while we're looking at
25 Exhibit 27, tell me who Jennifer Vick is.

1 A. That is my manager at the time that I was working
2 on this claim.

3 Q. So on Page 11 of the claims log we have an entry by
4 Jennifer Vick, who was your supervisor at the time, on 9/22
5 of '20 and she is approving an advance of \$250,000 based on
6 mitigation roof wrap costs and temporary repairs to building?

7 A. That's what it says.

8 Q. Add to this timeline 9/22/20. This one's a
9 payment, 250-K, mitigation.

10 A. No, that's not just for mitigation. That's an
11 advance toward the overall amount we owe on the claim.

12 Q. Okay. Look at what your boss said. She said
13 advance of 250,000 based on mitigation roof wrap costs and
14 temporary repairs to building.

15 A. Based on the documentation that we had at that
16 time, we felt comfortable advancing at least \$250,000 toward
17 the ultimate settlement of the claim.

18 Q. Okay. Let's talk about the document you had at
19 that time. I'm going to offer exhibit -- no, I'm not. I've
20 already offered it. I'm going to show you Page 10. So
21 Jennifer Vick's entry references an advance for mitigation
22 and that's based on what we see at Page 10 of your claims
23 log, Page 10 of Exhibit 27. You had an invoice at that time
24 for mitigation of over \$490,000 just in mitigation, correct?

25 A. That's correct.

1 Q. And that was in addition to more than 50,000 in
2 temporary roof repairs, correct?

3 A. That's correct.

4 Q. Okay. And based on those invoices that you had for
5 costs that had already been incurred on that date, Jennifer
6 Vick approved a \$250,000 advance?

7 A. No. The advance is not based on we got bills,
8 we're going to pay them. The advance is based on, okay,
9 well, look at the information we have, we feel comfortable
10 issuing a payment of 250,000 right now while we sort the rest
11 of it out.

12 Q. Mr. Lock, the advance was based on mitigation roof
13 wrap costs and temporary repairs. That's what your boss
14 said.

15 A. Yeah, but I'm -- I work with her every day. I know
16 when I send an authority request to my manager, you know,
17 it's not based on a specific amount. If it was based on
18 mitigation it would be for the amount -- a very specific
19 amount that we thought we owed specifically for mitigation.
20 It's a nice round number because it's an advance towards the
21 ultimate settlement of the claim.

22 Q. Is your boss putting inaccurate information in the
23 claims file?

24 A. No. I think you're interpreting it differently
25 than the way she meant it. I worked with her for five years.

1 I know how she meant it.

2 Q. I wasn't interpreting it. Did I read it correctly?

3 Did I read the words that she --

4 A. You read the words, yes, ma'am.

5 Q. Okay.

6 A. This is a note-taking system where people use
7 shorthand --

8 Q. I understand.

9 A. -- in a note.

10 Q. Now I want to ask you: What is a reserve?

11 A. A reserve is -- a reserve is essentially when the
12 insurance company takes into account of what they think a
13 claim may cost so that they can use that essentially as an
14 accounting function. You know, when a claim is opened, as
15 early as possible in a claim we try and get a best guess at
16 what we think the most the claim might cost. And after we do
17 our best to come up with the most that the claim may cost,
18 then we enter that as what's called a reserve in the system.
19 And how that's used by insurance company is the accounting
20 department can then use that to determine part of their
21 projected profits and losses for a given period of time.

22 Q. They can use that --

23 A. It's something that's required of the claims
24 department, but its ultimate purpose is more of an accounting
25 issue.

1 Q. And the company uses that to take -- to show losses
2 for tax purposes, too, don't they?

3 A. I'm not an accountant.

4 Q. Okay. You said that -- and correct me if I'm
5 wrong. You said that the reserve is the most that you might
6 ever pay on a claim?

7 A. No.

8 Q. Is that what you said?

9 A. I did say that, yes, ma'am.

10 Q. Okay. I'm going to offer --

11 A. Because the reason is because I don't want to go
12 back to my manager twice for them to bump it up. You know,
13 claims handling 101 is that you don't what's called
14 stair-step the reserves. You don't put them up and then put
15 them up and then put them up. You put them up to where you
16 think -- you know, the worst case scenario. The biggest
17 amount that we may have to pay, that's what you try to get
18 them up to. You know, it's not money out the door. It's
19 money that the accounting department is trying to figure out
20 that they might be able to consider towards their profit and
21 losses.

22 Q. Why wouldn't you always just set it at the policy
23 limits, then, if it's the most you may ever have to pay?

24 A. Because there are a lot of claims that obviously
25 don't have to be settled for the policy limits.

1 Q. I offer --

2 A. And that would provide a really poor accounting
3 function if you had your accounting department saying that
4 every single claim that we paid was for the policy limits.
5 You'd never know what your actual profits and losses were.

6 Q. So the number is actually not the most you may ever
7 pay, it's what you think you are actually going to pay on the
8 claim?

9 A. It's what we think the most the claim would have to
10 settle for based on what we know at this time.

11 Q. Going to offer --

12 A. And I can go through that if you like.

13 Q. We're about to.

14 MS. BROWN: I'm going to offer Exhibit 105.

15 MR. WOLFF: Your Honor, we have to approach.

16 **BENCH CONFERENCE**

17 MR. WOLFF: Before we get to that, in light of your
18 ruling, you might as well put that in if you need it,
19 the estimate, because you're going to let it in.

20 THE COURT: I'm going to let it in with Mr. Major
21 at some point. I think it's admissible for him. But I
22 agree with you, it's not technically admissible unless
23 you agree to it.

24 MS. BROWN: I'm going to do it the technical way,
25 John.

1 MR. WOLFF: I'm just saying I don't agree with --

2 MS. BROWN: I don't --

3 (All speaking at once.)

4 MS. BROWN: I know, but it may not -- I don't want
5 to go back to that right now.

6 MR. WOLFF: Here's the problem. So on reserve,
7 this is exactly what we talked about. This is the
8 *Southwest Louisiana Convention*. It says reserves are
9 put up based on what the company feels its liability may
10 be. Right. And it says very clearly -- the court says
11 the court will sustain a motion to exclude the evidence.
12 The court is aware of the -- (unintelligible) -- the
13 Court feels strongly that it should not be admissible
14 and gives -- (unintelligible) -- to determine the amount
15 of the actual loss meaning more than a plaintiffs' offer
16 to settle a case is significantly less than amount that
17 they take at trial.

18 THE COURT: I tend to agree with him.

19 MS. BROWN: That's not my --

20 MR. WYGANT: Can I say something real quick?

21 THE COURT: Sure.

22 MR. WYGANT: I didn't get a chance to -- I got
23 locked out of the last one. If you rule -- so first of
24 all, the exact language of it right here says that the
25 reserves are not admissible, need to determine the

1 amount of actual loss. Right. So that's what we're
2 talking about first meaning had, like, not for the
3 amount of the actual loss, not for a disputed amount.

4 Now, she's about to point out something and I'm
5 grateful she did because here this same decision has a
6 discussion of the *First National Bank of Louisiana* -- or
7 *Louisville*. And in this decision the Court is quoting
8 what one of the parties is saying in saying that the
9 reserves is relevant to state of mind in relation to
10 claims settlement practices, right, to state of mind for
11 claims settlement practices, not the amount of loss.
12 What the exact actual ruling of this one was that it's
13 not relevant for amount of loss. If you go and read
14 this case, the *First National Bank of Louisville*, I can
15 pull it up --

16 THE COURT: I'm not going to read it on your phone
17 so don't even --

18 MR. WYGANT: What it says is that it is relevant to
19 state of mind.

20 THE COURT: Well --

21 MR. WYGANT: -- like six cases and I can give you
22 20 more right now.

23 THE COURT: I don't need 20 cases. Here's the
24 deal. She's been questioning him about it, how they did
25 it. I think that's all very appropriate. You asked him

1 what the reserves were, didn't you?

2 MS. BROWN: Not yet. I didn't because of your
3 ruling.

4 THE COURT: No, I agree. I think you can talk
5 about -- again, the reserves are an accounting function.
6 They have nothing to really do with --

7 MS. BROWN: Their handbook says that they're
8 supposed to calculate it to be the ultimate probable
9 outcome. He has it. He's defining it as the most we
10 may ever pay. That's not right.

11 MS. WOLF: It's not relevant to --

12 THE COURT: Well, it's still.

13 MS. BROWN: It's relevant to what he calculated the
14 ultimate probable loss to be way back in October.

15 MS. WOLF: They're again trying to tie it back --

16 THE COURT: Here's my problem with all this. Why
17 don't you just look at the adjustment they did on this
18 claim and say they under adjusted it? Why do you keep
19 going to the reserves? The reserves are something that
20 he goes and reports to his accounting department.

21 MS. BROWN: Because for my bad faith claim I've got
22 to prove all the points in time where they knew it was a
23 policy limits case.

24 (All speaking at once.)

25 THE COURT: Why don't you go to the --

1 MS. BROWN: It's highlighted.

2 THE COURT: Why don't you just go to the adjustment
3 of the claim that he used to set the reserves at? I
4 mean, he had to have something to set the reserves.

5 MS. BROWN: I'm going to go there, too. I mean, to
6 me the bad faith is because they were many points in
7 time where they knew this was a policy limits case.

8 THE COURT: Seems to me you have an adjuster who
9 submits something to this guy, he calls his department
10 says here's what we set the reserves at. I guess I'm
11 not really following why you need to get into reserves
12 when you can go and say, hey, he had this adjustment --

13 MS. BROWN: Because they set the reserves and then
14 didn't make any payment anywhere near that.

15 THE COURT: They don't make the payments based on
16 the reserves. I think that's the problem. The reserves
17 are not there for them to be utilizing to make the
18 determination we got to make a payment. The reserves
19 are there for them to be sure they have enough money set
20 aside down the road --

21 MS. BROWN: Their definition says it's the most
22 likely exposure, not the highest exposure.

23 THE COURT: You can ask him that, but I'm not going
24 to let you get into all this reserve stuff. I just
25 think it's not -- because you're quoting the reserves

1 that they knew -- based on the reserves they said they
2 owed that much money, and that's not actually accurate.
3 I know you want it to be accurate, but that's really not
4 what the reserves are about. It's an accounting
5 function. That's why the cases all consistently don't
6 let you --

7 MR. COX: Can we hear their definition of the
8 reserves, please.

9 || THE COURT: I don't know --

10 (All speaking at once.)

11 MR. COX: He obviously did. Where is the
12 definition? Is this the definition?

13 MS. BROWN: Yes.

21 MS. BROWN: That's not what he said. He said it's
22 the most we may ever have to pay.

23 THE COURT: Why don't you ask him this? I mean,
24 you can ask him that. Here's the bottom line.

25 MS. BROWN: -- don't know what he did with it.

1 THE COURT: You can ask him -- again, the reserves
2 are not what the claim is based on. The claim is based
3 on the adjusting estimate.

4 MS. BROWN: I do understand that.

5 MR. COX: Maybe, Judge, at the end of the day --

6 MS. BROWN: Can we proffer?

7 MR. COX: -- when the jury's gone we can proffer
8 it.

9 MR. WOLFF: It gets to 403. That's the problem.
10 And that's what the *Shelter* case is talking about where
11 it says the Court finds it would be overly prejudicial
12 and confusing --

13 THE COURT: Reserves are just so different than
14 what this claim is about. I mean, there's no -- it
15 takes some information from adjusters and then it just
16 kind of gives you a ballpark. It's a ballpark.

17 (All speaking at once.)

18 MR. WYGANT: So it is true a reserve is not equated
19 with an undisputed amount. Go down to the rest of this
20 paragraph. However, with respect to allegation, the
21 amount of reserves might affect bonuses, employees --

22 (All speaking at once.)

23 THE COURT: Not getting into that. I'm done. I
24 ruled.

25 **PROCEEDINGS CONTINUED**

1 THE COURT: Mr. Wolff, she was offering Exhibit 27,
2 the claims log. Any objection?

3 MR. WOLFF: No, we do not object to Exhibit 27.

4 THE COURT: It'll be admitted. Sorry about that,
5 ladies and gentlemen. I apologize for the sidebars, but
6 occasionally we have to have a few discussions. I do
7 apologize that it delays us, but it's necessary
8 unfortunately. You know lawyers. They like to talk.

9 Okay. Ms. Brown, go right ahead.

10 MS. BROWN: Did I get Exhibit 27 admitted?

11 THE COURT: 27's in.

12 MS. BROWN: Okay. Thank you.

13 BY MS. BROWN:

14 Q. I want to move on now, Mr. Lock, to what has
15 actually been spent to repair this building and the invoices
16 that were submitted to you.

17 MS. BROWN: I'm going to offer Exhibits 30 to 32.

18 MR. WOLFF: No objection, Your Honor.

19 THE COURT: It'll be admitted.

20 BY MS. BROWN:

21 Q. I'm going to show you a series of estimates from
22 Crest Exteriors that were submitted to you along with the
23 Skyline estimate back in September. Do you recall these?

24 A. Yes, ma'am.

25 Q. Okay. And I think Exhibit 31 actually shows the

1 entirety of the -- and Scottsdale had this information in
2 September, correct, from Crest?

3 A. I think that's when we received it. It would have
4 been received, I think, whenever we finally received the
5 digital versions of whatever they supplied the independent
6 adjuster.

7 MS. BROWN: Next I'm going to offer Exhibit 26.

8 MR. WOLFF: No objection, Your Honor.

9 THE COURT: It'll be admitted.

10 BY MS. BROWN:

11 Q. Before I do that, before I go to 26, I just want to
12 make it easy. I'm going to have you watch with me and add
13 these up. So there was a \$45,000 charge. There was a
14 payment for 22,500 and then a \$6,000 change order. And that
15 was on Crest --

16 A. I know that 6,000 plus 22.5 is 28.5, if that's what
17 you're --

18 Q. Right. Gotcha. So that is -- this was for shrink
19 wrapping the roof, which you understood that to be temporary
20 roof repairs?

21 A. Yes, ma'am.

22 Q. Okay. Next I've got a bill from Capstone. This
23 was also provided to you back in September with the Skyline
24 estimate; is that right? This is the environmental
25 inspection.

1 A. I don't remember if this was part of that package.
2 Something tells me that I got this later; but it may have
3 been a report that I got later, not necessarily this invoice.
4 We can check to see what was included in that packet, that
5 digital package from them.

6 Q. Okay. You don't have a dispute that you received
7 this invoice from Capstone?

8 A. I don't dispute that, no.

9 Q. Okay.

10 A. It was invoiced on the 28th of September, though.
11 So if it was -- if it was sent to us in that first digital
12 bundle of, you know, documents, then the timeline doesn't
13 sound right. I think it would have had to have been
14 created -- I think we received the photos and the estimates
15 from the public adjuster before the 28th.

16 Q. Okay.

17 A. I mean, it didn't take them 13 days to convert them
18 back into digital and send to us, right?

19 Q. Okay. The total on this bill is \$17,287.50,
20 correct?

21 A. That's what it says, yes, ma'am.

22 Q. Okay. Let me go back to Crest now that I've got
23 the other paper I was looking for. I want to make sure we
24 get our totals so we can add them all up at the end. So the
25 total for Crest was the 45,000 plus the \$6,000 change order

1 plus we looked at the first \$2,000 estimate from Crest. Here
2 we go. So the total for Crest was 53,000, correct?

3 A. Yes.

4 Q. Okay. Want to make sure. So far these are the
5 costs that we actually have.

6 MS. BROWN: Next I'm going to offer Exhibit 23.

7 MR. WOLFF: No objection.

8 THE COURT: It'll be admitted.

9 BY MS. BROWN:

10 Q. Exhibit 23 is a remediation -- is a bill from the
11 remediation company, All Clear?

12 A. Yes, it is.

13 Q. And the total on this bill, \$491,141.79?

14 A. Yes.

15 Q. Okay. And Scottsdale also had this invoice in
16 September of 2020, correct?

17 A. I believe so, yes.

18 Q. Now, to be fair, you heard in the opening, there
19 was a discussion about Mr. Odom entering into sort of a
20 settlement agreement with All Clear?

21 A. Yes.

22 Q. Okay. And so what he's paid All Clear at this
23 point is actually this \$330,000 figure; you understand that?

24 A. Yes, ma'am.

25 MS. BROWN: I offer Exhibit 62.

1 MR. WOLFF: Only to the extent that it's an
2 estimate and not actual cost, no objection.

3 THE COURT: Okay. So admitted.

4 MS. BROWN: I don't understand the objection.

5 THE COURT: Said he's agreeing to let you admit it
6 on the premise that it's an estimate; is that correct?

7 MR. WOLFF: Yes, Your Honor.

8 MS. BROWN: 62?

9 MS. WOLF: It's okay.

10 MR. WOLFF: Yeah, she says it's okay.

11 THE COURT: I understand. That's fine. It'll be
12 admitted, then, without any limitation.

13 BY MS. BROWN:

14 Q. Okay. This is an invoice for \$9,560 for electric
15 work?

16 A. Yes. It's dated October 13th, 2020.

17 Q. Okay. That's something that was also in your
18 Scottsdale file, correct?

19 A. Yes.

20 MS. BROWN: Okay. Next I'm going to offer
21 Exhibit 65.

22 MS. WOLF: No objection.

23 THE COURT: It'll be admitted.

24 BY MS. BROWN:

25 Q. The next bill I'm going to show you is for

1 insulation work. Now, this bill is for 36,000. You recall
2 earlier when you were explaining the way the policy limits
3 worked and we talked about that \$10,000 code upgrade?

4 A. Yes, ma'am.

5 Q. So the insurance policy allowed for some code
6 upgrades up to \$10,000?

7 A. Yes.

8 Q. Okay. And so this is where Mr. Odom, on behalf of
9 Eaux Holdings, decided to use that \$10,000. So all that he
10 has sought from Scottsdale on this bill is \$10,000.

11 A. Yes.

12 Q. Do you understand that?

13 A. Yeah. That coverage, to be clear, that pays the
14 difference between what it cost to put it back the way it was
15 and the additional cost above and beyond that to bring it up
16 to the minimum code requirement.

17 Q. Okay. So for purposes of this insulation bill --

18 A. So if this entire bill is for \$36,000, for example,
19 and the normal cost to put it back the way it was was
20 \$30,000, then the additional amount owed would have been the
21 six.

22 Q. Okay. So for purposes of this on chart, I've put
23 the \$10,000. That's the limit on the code upgrade.

24 A. It is. That is the code upgrade limit, yes, ma'am.

25 MS. BROWN: Next I'm going to offer -- hold on.

1 I'm going to offer Exhibit 112. I'm also going to
2 offer -- hang on. I'm going to offer 96 and 112.

3 MS. WOLF: So for Exhibit 96 we have no objection.
4 And Exhibit 112, which is the new one, Your Honor, we
5 raised an objection because it was late. We understand
6 the judge's ruling on that, that you're going to allow
7 it in; but we want to note the objection for the record.

8 THE COURT: It'll be admitted.

9 BY MS. BROWN:

10 Q. So I'm going to start with Exhibit 96, and Page 3
11 of Exhibit 96 is from Poole Roofing. And we're going to hear
12 from Mr. Poole tomorrow, but this was the estimate for the
13 roof work at 620 Esplanade. You've seen this document
14 before?

15 A. I'm not sure if I have.

16 Q. Okay.

17 A. When was it received? When was it sent to us?

18 Q. Well, I can tell you the estimate was dated October
19 of 2020, broken up into phases. And the total estimate at
20 that time was \$289,545.

21 A. I see it.

22 Q. Now I'm going to show you -- Exhibit 112 is dated
23 March 3rd. This is a brand-new final bill for the roofing,
24 and you see that the total here is a little less than what
25 was originally turned in. Okay. You see the total here is

1 less?

2 A. Yeah, this is less than the other page that you
3 showed me.

4 Q. And the total for the roof work, \$276,887, you see
5 that?

6 A. Yes, that's what it says.

7 Q. I'll add that to the list.

8 MS. BROWN: Next I'm going to offer Exhibit 51.

9 MS. WOLF: No objection, Your Honor.

10 THE COURT: I'm sorry, Ms. Wolf. What'd you say?

11 MS. WOLF: I said no objection. I just want to
12 make sure, Somer, that what you're including as
13 attachments to it is about ten pages.

14 THE COURT: Did you hear?

15 MS. BROWN: I have an eight-page document as
16 Exhibit 51.

17 MS. WOLF: I'm sorry. Did you tell me how many
18 pages it is?

19 MS. BROWN: Eight.

20 MS. WOLF: Eight pages. Okay. Your Honor, the
21 only objection there is to the extent that it used to
22 show an actual cost; but yes, as far as it's the Encore
23 contract, no objection.

24 THE COURT: It's admitted.

25 BY MS. BROWN:

1 Q. Exhibit 51 is the contract that Mr. Odom signed
2 with Encore Construction for the bulk of the work at 620
3 Esplanade, and this was provided to Scottsdale as well?

4 A. I don't recall seeing this document before. When
5 was it received? You know when it was sent to us?

6 Q. I don't.

7 A. I can tell you if I --

8 Q. It was signed December 20th.

9 A. I wasn't assigned to the claim on December 20th.

10 Q. Well, since the document has been admitted, I'll go
11 ahead and ask you about it. You see the total sum here,
12 though, is 1.36 million?

13 A. That's what it says.

14 Q. And let me, before I -- I'm going to show you the
15 number that I've put here for Encore and it's less than 1.36.
16 I want to ask you about a replacement cost policy.
17 Replacement cost policy pays for what the insured actually
18 spent or incurred to repair the property, correct?

19 A. The actual amount incurred, yeah. Yes, ma'am.

20 Q. The actual amount incurred. And, well, for one
21 thing, the policy doesn't require him to pay out of pocket.
22 You used the word incurred and that's the right word. It
23 doesn't require him to pay out of pocket and then go get
24 reimbursed. If he's done the work and incurred the debt,
25 that's sufficient to get him reimbursed?

1 A. Yeah. If they incurred the debt, you know, if they
2 owe it, like charged on a credit card or took out a loan,
3 it's legally, I guess, owed, I would consider that to be
4 incurred.

5 Q. Okay. And if while Mr. Odom had his building
6 gutted down to the studs and had crews there he decided, for
7 instance, to replace the HVAC system because it was old and
8 he had the building in that condition, that wouldn't be
9 appropriate for him to submit as part of his insurance claim,
10 agreed?

11 A. Correct.

12 Q. So if there was something in the Encore contract
13 that wasn't hurricane related and he backed that number out,
14 that would be appropriate?

15 A. Yeah, it would be appropriate to not include things
16 that weren't part of the hurricane damage.

17 Q. So I'm representing to you that's why this number
18 is not 1.36, it's 1.33.

19 A. Okay.

20 Q. And that would be the appropriate way for Mr. Odom,
21 on behalf of Eaux Holdings, to be reimbursed only for those
22 things that were hurricane related?

23 A. Well, I feel like you're asking me -- I've never
24 seen or reviewed that estimate at all. But general practice,
25 we would not pay them for damage that's not related to the

1 hurricane. That's correct.

2 Q. And there's nothing wrong with him getting the work
3 done at the same time?

4 A. Absolutely not.

5 Q. Okay.

6 A. It's a good idea to get those things done while
7 everything's apart if you can.

8 Q. Okay. All right. We're rounding this out finally.
9 The last one I have.

10 MS. BROWN: I'm going to offer Exhibit 61.

11 MS. WOLF: No objection.

12 THE COURT: It'll be admitted.

13 BY MS. BROWN:

14 Q. And this is a bill from Industrial Refrigeration
15 for \$1,280. You see this?

16 A. I see it. Yes, it is.

17 Q. And so I've added that to what the repairs actually
18 cost. So what I'd like to do -- I've added it up, but I want
19 us to do it together because I want to make sure we agree on
20 the math.

21 MR. WOLFF: We don't.

22 THE COURT: What's your objection?

23 MR. WOLFF: This witness cannot testify as to what
24 it actually cost. She's representing that's what it
25 cost. These are numbers. I'm sure they add up to that

1 amount. But the challenge is whether or not they
2 incurred those actual costs. This witness can't testify
3 to that.

4 THE COURT: I don't think that's what she's asking.
5 She's just going to ask him if they agree on what this
6 adds up to be.

7 MR. WOLFF: I'll stipulate that her math is good.

8 THE COURT: Perfect.

9 MR. WOLFF: I don't stipulate that that's what
10 actually --

11 THE COURT: I didn't really want to see her tap on
12 the calculator.

13 MS. BROWN: So I can just reveal the number to you.

14 THE COURT: So we agree -- you agree to -- that
15 those numbers add up to that amount.

16 MR. WOLFF: That the numbers she put on that chart
17 equal that amount, yes, Your Honor.

18 BY MS. BROWN:

19 Q. Okay. And this number, Mr. Lock, \$2,033,893.50, is
20 very close to the policy limits. It's actually over the
21 policy limits. It's very close to the policy limits plus the
22 additional coverages available?

23 A. Well, it included one additional coverage that's on
24 here and the debris removal, assuming that was included in
25 the All Clear.

1 Q. Okay. So it's very close to the most that
2 Scottsdale would ever pay under the policy?

3 A. Yes, ma'am.

4 Q. Are you familiar with Granger Stuck's work in this
5 case?

6 A. I'm not.

7 Q. I'll save those questions for him. And you are
8 aware that Scottsdale has now paid almost \$1.8 million on
9 this claim?

10 A. I'm not aware of what payments were made after mid
11 December 2020 because I was no longer assigned to the claim.

12 Q. Okay. Let's look at the payments.

13 MS. BROWN: I'm going to offer Exhibit 103.

14 MS. WOLF: No objection. Ms. Brown, if you're
15 going to do all of the Scottsdale checks, I think we're
16 probably going to have no objection to that. You want
17 to tell me what the exhibits numbers are?

18 MS. BROWN: Yes. That'd be great. 103, 68, 63 --

19 MS. WOLF: Just a little bit slower. 68, 63.

20 MS. BROWN: -- 64 and 66.

21 MS. WOLF: No objection to any of the --

22 THE COURT: They'll be admitted.

23 MR. WOLFF: And if there's a summary chart, you're
24 welcome to show that.

25 MS. BROWN: Okay. I'll do it.

1 MR. WOLFF: Save some time.

2 BY MS. BROWN:

3 Q. And so, Mr. Lock, looking at this and having just
4 understood that we've admitted all the checks that support
5 these payments, you would agree that Scottsdale, as of today,
6 has paid Eaux Holdings \$1,796,090.51?

7 A. Yes, ma'am.

8 Q. That number is less than the number that we just
9 looked at?

10 A. Yes, it is.

11 Q. Let's switch gears, shall we, and talk about --

12 THE COURT: Let me ask you something, Ms. Brown.
13 How much longer do you think you have with this witness?

14 MS. BROWN: A little while.

15 THE COURT: Okay. We're pushing the 4:30, 5:00
16 hour. It's been a long day for our jurors, being the
17 first day. I would probably prefer if we stop here, let
18 our jurors go home. They didn't know they were getting
19 picked. I'm sure they have some logistical things they
20 probably need to take care of so I want to definitely
21 give them that opportunity.

22 We do thank you all very much. We're going to call
23 it for today. We'll pick up in the morning. I'm going
24 to let the jury go out and then they'll show you how to
25 get out of the building, let you go home. We'll be back

1 at 9:00 a.m. tomorrow. All rise for the jury.

2 (Jury exits courtroom.)

3 THE COURT: Anything else, housekeeping before we
4 adjourn for the day?

5 MR. COX: No, sir.

6 MR. WOLFF: No. I think we actually got a lot of
7 ground covered.

8 THE COURT: Okay. Very good, then. We had a big
9 audience today, didn't we.

10 MS. BROWN: Half the southwest Louisiana bar
11 association.

12 THE COURT: Should have had the bench bar
13 conference, I guess, while we were here. Very good,
14 then. We'll see y'all in the morning at 9:00 o'clock.

15 (Proceedings recessed for the day.)

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CERTIFICATE

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3 I hereby certify this 16th day of May, 2022 that the
4 foregoing is, to the best of my ability and understanding, a
5 true and correct transcript of the proceedings in the
6 above-entitled matter.

7

Deidre D. Juranka
Deidre D. Juranka, CRR
Official Court Reporter

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